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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1948

No. ____

J. R. MASON,
Petitioner,
vs.
PARADISE IRRIGATION DISTRICT,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Comes now J. R. Mason, the above named petitioner, *pro se,* and respectfully petitions this Honorable Court for the issuance by it of its writ of certiorari, addressed to the said United States Circuit Court of Ap-

peals for the Ninth Circuit, directing said Court to certify the above entitled cause to this Court for review and final decision.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This proceeding, bottomed on the provisions of Chap. IX of the Bankruptcy Act (11 USCA 401-403, P.L. 481, Ch. 532, Stat. Sec. 13) involves a statutory trust of restricted land, within the dominion and sovereignty of the State of California, and two claims upon its rents, issues and profits.

The Reconstruction Finance Corporation holds one contract, made in 1934. (R. 74/86. *Mason v. Paradise I. D.*, Case No. 306, Oct. Term, 1945.)

Petitioner duly filed his proof of claim March 10, 1938 (R. 25; No. 306) as the bona fide owner and holder of $29,000 Paradise Irrigation District valid, binding and unpaid original General Obligation 6% Gold Bonds, issued in 1917 and 1920, and secured by unlimited ad-valorem land taxes and other sources of revenue pledged in the applicable state laws.

The present lawful value of petitioner's claim, with statutory interest, is more than $50,000. Its lawful force and effect and validity is not questioned. Petitioner never submitted his claim to the jurisdiction of the Bankruptcy Court, nor to the Plan of Composition. (R. 138; No. 306.) As full payment for this claim, petitioner is offered $15,231.09 (R. 4) on condition that he accept it within the year, or get nothing

at all, and be forever restrained from "asserting any claim or demand whatsoever". (R. 31.)

On May 22, 1934, the R.F.C., acting under the provisions of Sec. 36, part 4, of the Emergency Farm Mortgage Act of 1933 (43 U.S.C. Sec. 403) made a refinance contract. (R. 74; No. 306.) This contract in no way involved or impaired the lawful force and effect of the bonds owned by petitioner. All the provisions in the contract held by the R.F.C. have been duly complied with by respondent, and the Plan of Composition provides for no concession whatever by the R.F.C., the sole creditor consenting to the Plan. No proof of claim was filed at any time by the R.F.C., but its "consent" to the so-called "plan" is shown. (R. 12; No. 306.) The provision in the R.F.C. contract that it would not have to disburse its loan until the holders of all the original bonds "had agreed to make their bonds available for refinancing" (R. 8; No. 306) was waived and became ineffective when the R.F.C. decided that enough original bondholders had agreed to sell their bonds "to enable said District to reduce and refinance all or by far the greater part of such existing debt" (R. 75; No. 306) and disbursed the proceeds of its loan to the District. (R. 118/122; No. 306.) Therefore, any impression that might otherwise exist "that the loan would not be disbursed until the holders of all of the principal amount of the District's outstanding bonds had agreed to make their bonds available for refinancing" (R. 8; No. 306) is wholly unwarranted. Nothing in the contract between the District and the R.F.C. affects or impairs the full

force and effect of the bonds owned by petitioner. (R. 92; No. 306.)

The identical Plan of Composition, as in this proceeding, was tried by respondent, without success in 1936. (R. 86/89; No. 306.) That judgment had become *res adjudicata* long before the instant proceeding began. (*Chicot Co. Dr. Dist. v. Baxter State Bank*, 308 U.S. 371.) Petitioner's rights had become *res adjudicata*, under the Federal rule applied by this Court in the *Chicot* case, supra, before the instant proceeding was commenced. The present petition for composition filed in 1937 asked the District Court to enter an injunction "restraining * * * the levy of any tax or assessment * * * during the pendency of this proceeding * * *". (R. 4; No. 306.) This injunction was ordered, and an interlocutory decree was entered, restraining petitioner "pending the entry of the final decree * * * from attempting collection * * * by legal proceedings or otherwise." (R. 53; No. 306.)

Upon learning of the form of the proposed final decree, petitioner duly filed his objections, including his objection to "that part of the proposed final decree which provides that the holders of certain bonds are restrained and permanently enjoined from asserting any claim or demand whatsoever * * *". (R. 5/21.)

Respondent did not deny that the bankruptcy jurisdiction authorized under Ch. IX allows no restraint and permanent injunction in a final decree, but merely argued that the objections were "completely and

wholly beside the point in question and the legal matter involved, namely the form of the decree." (R. 23.)

The District Court issued no opinion, and did not strike the permanent injunction restraining the assessment and collection of taxes. (R. 26.) Notice of Appeal was dully filed. (R. 32.) Statement of points on appeal. (R. 33.) Under point No. 7 it was urged "The injunctive provisions in the final decree, as applied, are an error of law * * *". Transcript of record was printed, and appellant's opening brief was printed April 9, 1948 and duly filed in the Circuit Court. Instead of submitting a reply brief, respondent filed motion to dismiss the appeal, on the allegation: "That the subject matter of the present appeal was the subject matter of the appeal heretofore made * * * that the decision above cited (326 U.S. 536) is *res adjudicata* as to all points raised on this appeal, and as to all points which could be raised; a new point raised, if any, is frivolous." (R. 46/52.)

Obviously it would have been impossible to have objected to this permanent injunction in the final decree, in the appeal from the interlocutory decree. The final decree had not been entered when petitioner was before this Court in Case No. 306, Oct. Term, 1945, therefore this proceeding is not "*Res adjudicata* * * * as to all points which could be raised on this appeal". This Court has never indicated that the Federal statutes prohibiting coercive judicial orders or decrees "restraining the assessment or collection of any tax" (Rev. St. § 3224, 26 USCA § 1543) may be ignored or circumvented in a Ch. IX proceeding.

Ch. IX only allows injunctions "pending the determination of the matter". (11 USCA 403(c).)

Over vigorous objections to the motion to dismiss the appeal (R. 52/63), and without the submission of any reply brief by respondent, the motion was allowed by the Circuit Court of Appeals (R. 64), without opinion upon any of the specifications of error presented in petitioner's brief (R. 33, 34), each of which points was supported by controlling decisions of this Court and the California Supreme Court. The statement of points on appeal (R. 33, 34) raised Federal questions necessary to the proper determination of the appeal. The dismissal of the appeal, without opinion upon any of the points presented, is adverse to petitioner. There are no other grounds, outside the Federal question upon which the judgment in the final decree, as applied was predicated, or might stand.

OPINION BELOW.

No opinion upon the objections to the form of the final decree was issued by either the District Court or the Circuit Court of Appeals. The order of the Circuit Court granting the motion to dismiss the appeal is shown. (R. 64.)

JURISDICTION.

The order and decree of the Circuit Court of Appeals was entered May 7, 1948. (R. 64.) The juris-

diction of this Court is invoked under Section 240(a) of the Judicial Code. (28 USC, sec. 347(a).)

QUESTIONS PRESENTED.

1. Whether the injunction provision in the final decree, permanently restraining suits for the assessment and collection of land taxes required by applicable state law and decisions, conflicts with 28 USCA § 41(1), Rev. Stats. § 3224, 26 USCA § 1543, and Sections 64a, 67b, and 83 c, i., of the Bankruptcy Act, and also deprives petitioner of the equal protection guaranteed by the 5th and 10th Amendments?

2. Whether the time limitation of 12 months, after which period the money *in custodia legis* will be paid to the bankrupt, whether allowed claims have been paid or not, conflicts with 11 USCA § 106, sub. (b), and Judicial Code, Secs. 851, 852, Title 28?

3. Whether Ch. IX of the Bankruptcy Act allows coercive jurisdiction to abrogate land taxes, tax liens and encumbrances created by state law and decisions?

4. Whether the previous denial of discharge is *res adjudicata*?

5. Whether the Circuit Court of Appeals erred in granting the motion to dismiss the appeal without opinion upon any of the eight points raised in the appeal and submitted in appellant's opening brief?

6. Whether the pledge of a sovereign state to exercise its constitutional power to tax the rent value of

restricted land is subject to coercive bankruptcy jurisdiction?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.

The state law which governs and controls the rights, powers and duties of respondent and the separate contract obligations of both the R.F.C. and petitioner, is Stats. 1897, p. 254; Deering's General Laws, Act 3854, p. 1792, now codified as Water Code of California, Stats. 1943, Chap. 368, Secs. 20000 to 27758. The fund *in custodia legis* is governed by Jud. Code, Secs. 851-852, Title 28; and 11 USCA § 106 sub. (b). The base of this proceeding is Ch. IX of the Bankruptcy Act, 11 USCA §§ 401-403, as amended. The Federal constitutional provisions are Art. I, sec. 10, clause 1 and the 5th and 14th Amendments.

REASONS WHY THE WRIT SHOULD BE ALLOWED.

1. The District Court erred in permanently restraining suits to compel the assessment and collection of the ad-valorem land taxes required by applicable state law.

2. The District Court erred in ordering the fund *in custodia legis* to be paid to the bankrupt, before all allowed claims upon that fund have been paid.

3. The Court below erred in not confining its final decree to the jurisdictional limits allowed by the United States Constitution.

4. The Court below erred in failing to decide that the prior denial of discharge is *res adjudicata.*

5. The Circuit Court erred in granting the motion to dismiss the appeal without opinion upon any of the points raised in the appeal.

PRAYER.

Wherefore, petitioner prays that this Court issue its writ of certiorari, directed to the Circuit Court of Appeals of the United States, Ninth Circuit, directing said Court to certify the said cause up to this Court, and that this Court upon the filing of the record herein and after appropriate proceedings herein, order the injunction in the final decree stricken; and that petitioner be granted such other and further relief as may to this Court appear just and proper.

Dated, San Francisco, California,
July 15, 1948.

Respectfully submitted,
J. R. MASON,
Petitioner, Pro se.

In the Supreme Court
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United States

OCTOBER TERM, 1948

No. .....

J. R. MASON,
Petitioner,
vs.
PARADISE IRRIGATION DISTRICT,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

FACTUAL BACKGROUND.

This Court has adhered steadfastly to the fundamental principle that "* * * as to the power to borrow money neither the United States on the one hand, nor the States on the other, can interfere with that power as possessed by each and an essential element of the sovereignty of each." (*Pollock v. F. L. & T. Co.*, 157 U.S. 429.)

In the recent case of *U. S. v. Carmack*, 67 S.Ct. 252, it was said:

> "If the United States have the power it must be complete in itself. It can neither be enlarged or diminished by a State. * * * The consent of a State can never be a condition precedent to its enjoyment."

The Congress has not laid any direct ad-valorem tax on land since 1823. (Ch. 37, Laws 13th Cong.) Such a tax statute, enacted in 1861 was repealed, quickly. (Ch. 45, Laws 37th Cong.)

The question was argued in The Federalist Essays, where the leading Federalist, Alexander Hamilton, said in Essay XXXIII:

> "Though a law, therefor, laying a tax for the use of the United States would be supreme in its nature, and could not be legally opposed or controlled, yet a law for abrogating or preventing the collection of a tax laid by the authority of the State (unless upon imports or exports), would not be the supreme law of the land, but a usurpation of power not granted by the Constitution. * * * If there ever should be a doubt on this head, the credit of it will be entirely due to those reasoners who in the imprudent zeal of their animosity to the plan of the convention, have labored to envelop it in a cloud calculated to obscure the plainest and simplest truths."

In the *U. S. v. Bekins,* 304 U.S. 27 case, which held the Federal law on which this proceeding is based "Not unconstitutional", it was carefully pointed out

> "* * * that Sec. 83-e, provides as a condition of confirmation of a plan of composition that it must appear that the petitioner 'is authorized by law

> to take all action necessary to be taken by it to carry out the plan' and, if the judge is not satisfied on that point as well as on the others mentioned, he must enter an order dismissing the proceeding. The phrase 'authorized by law' manifestly refers to the law of the State."

The State law governing and controlling the rights and obligations of petitioner and respondent, and also controlling the contract of the R.F.C. and tax obligations of all owners, holders and users of land within Paradise Irrigation District, Butte County, California, is Stat. 1897, p. 254, as amended; Deering's General Laws, Act 3854; Water Code of California, Stat. 1943, Ch. 368, Secs. 20000 to 27758.

The first attack against this venerable State law to reach this Court established clearly and unequivocally that the act involves land taxes imposed by authority of the State, saying in *Fallbrook I. D. v. Bradley*, 164 U.S. 112 at p. 176:

> "* * * although there is a marked distinction between assessments for a local improvement and the levy of a general tax, yet the former is still the exercise of the same power as the latter, both having their source in the sovereign power of taxation."

There is perhaps no land tax statute, which has been the subject of more frequent litigation, in both State and Federal Courts than this one, all of which cases will be clouded, if not wholly nullified, if the final decree, as applied by the United States District Court in this proceeding is not disallowed by this Court.

The bonds owned by petitioner are Federal Income Tax exempt, and have been twice so held by the United States Attorney General in 30 Ops. 252 (1914) and in 38 Ops. 563 (1937).

If Chap. IX of the Bankruptcy Act, the base of this proceeding, had been based on the tax clause, and had subjected to Federal income tax the bonds of such issues only where a per cent of the bondholders had consented to Federal taxation, leaving other similar bond issues tax exempt, its lack of uniformity would be at once apparent. But Ch. IX leaves immune from Federal bankruptcy jurisdiction all similar bonds, unless the holders of ⅔ or more of the bonds allow the jurisdiction. The Circuit Courts are in serious conflict, some holding that Chap. IX "* * * is dependent on State consent, and is limited to that consent". *Green v. City of Stuart,* 135 F.2d 33 (CCA 5). In the Seventh Circuit, it is held that the Federal jurisdiction authorized in Ch. IX makes State consent unnecessary. *In re S. Beardstown Dr. Dist.,* 125 F.2d 13.

It is submitted that

> "Neither consent nor submission by the States can enlarge the powers of Congress." *U. S. v. Butler,* 297 U.S. 1.

Certainly it must also follow that

> "Neither consent nor submission by some bondholders can enlarge the powers of Congress."

> "The rule is well settled that creditors may enter into and bind themselves by a composition

agreement. * * * But it is also settled that those who do not enter into the agreement can not be bound thereby. (Citations.) Such is the rule in this State."

Dundee v. Pressgrove, 15 So. 2d 448 (Fla. Sup. Ct.)

Such is also the rule in California applicable to the statutory claim owned by petitioner who never did "enter into the agreement and can not be bound thereby." (R. 92; Case No. 306, Oct. Term, 1945.)

That no majority can ever deprive minority bondholders of their statutory rights under applicable California law was settled in *Selby v. Oakdale I. D.,* 140 C. A. 171.

Petitioner has regularly presented his bonds and coupons for payment or registration, as they matured, consisting of bond coupons due July 1, 1936, et seq., and bond principal due July 1, 1937, et seq. (R. 139; Case No. 306.) These claims when so presented are construed as a final judgment, and as rights which have become vested. *Moody v. Prov. I. D.,* 12 Cal. 2d 389. Such claims are explicitly excepted from Federal jurisdiction by the provisions of Sec. 83(c), but the final decree, as applied in this case accords petitioner's claims no such recognition.

Petitioner does not question the right of the R.F.C. to the full payment of its contract with respondent. That contract will not in any respect be infringed or impaired no matter what happens to this petition. The R.F.C. yielded nothing whatever by "consenting"

to the Plan of Composition, and has, at all times been in a supreme and commanding position to take jurisdiction away from the Bankruptcy Court unless its ideas dominated. (R. 179-e; No. 306.)

Both principal and interest upon the contract between respondent and the R.F.C. have been fully and regularly paid all these years, while the money due petitioner has been unlawfully denied him and given to the R.F.C. (R. 139; No. 306.) The money, on deposit with the District Court and offered as full payment is much less than the statutory interest alone on his claim.

According to Sec. 83(d) the consent of the R.F.C. to this proceeding is not of any force or effect, because the R.F.C. is not affected adversely by the Plan, and nothing in the record suggests it would be.

Petitioner is thus caught between pressure originating in the R.F.C., and a struggle not alone to defend his vested rights as an investor in the lawful bonds of another Government, but to defend fundamental law as it has been construed and applied by this Court before and since the *Bekins* case, supra.

Further and not less important is that fact that the unrestrained operation of this venerable California law for over sixty years, has advanced and always protected the equal right of all persons to acquire, use and hold land, as that equal right was very recently construed by this Court in the *Shelley v. Kraemer* case on May 3, 1948, 68 S. Ct. 836.

The land in Paradise Irrigation District is all within the dominion and sovereignty of California and the power of California to control its devolution or private ownership is paramount. *Blythe v. Hinckley,* 180 U.S. 333, 341; *Skaggs v. Comm.,* 122 F.2d 721 (cert. denied 315 U.S. 811).

That private holders of such land can not invoke Federal bankruptcy jurisdiction when land assessments are not paid was reaffirmed in *Fallbrook v. Cowan,* 131 Fed. 2d 513. Despite the vigorous protests by counsel for Mrs. Cowan, certiorari was denied in *Cowan v. Fallbrook,* 320 U.S. 735.

Respondent has no standing or authority to invoke the bankruptcy jurisdiction in order to escape its duty to assess and collect the ad-valorem land assessments made mandatory by applicable State law, and can get no authority to violate the laws of its creator, the State of California, by consent from the R.F.C.

In "A Study in Central Valley of California on Effects of Scale of Farm Operations", Senate Committee Print, No. 13, 79th Cong. 2d Sess., pursuant to S. Res. 28, appears the following:

> "Establishment of an Irrigation District under the original Wright Act (Stat. 1897, p. 254) made it advantageous to subdivide and sell the land. Thus the Dinuba water supply was a responsible agent in establishing farm size in that community."

The basic reason why this law protects the equal right of all persons to acquire, use and hold land, is traceable to the principle employed for raising the

funds required by the Districts to meet their obligations.

All buildings and improvements are expressly exempted from tax. Stat. 1943, Ch. 368, Sec. 25500. Each District shall levy an assessment upon the land within the district in an amount sufficient to raise money to pay principal and interest of all bonds that have matured or that will mature before the close of the next ensuing year, Sec. 25650. If the assessment is not paid within 3 years, full title escheats to the District "free of all encumbrances", Sec. 26300. Thereafter, the District is free to administer the land as a beneficent landlord, and to collect its "rents, issues and profits", Sec. 26301. This provision was affirmed in *Provident v. Zumwalt*, 12 Cal. 2d 365.

The higher the annual ad-valorem land assessment, the lower will be the cost for homeseekers acquiring the title deed to this land. Adam Smith, Wealth of Nations, Bk. 5, c. 2 (1776); J. S. Mill, Principles of Pol. Economy, Bk. 5, c. 2, § 2 (1884); Ricardo, Principles of Pol. Economy, 221-4 (1817); Seligman, The Shifting and Incidence of Taxation, c. 3 (1910); James Mill, Political Economy, 253 (1826); Buttenheim, Unwise Taxation as a Burden on Housing, 48 Yale L.J. 240 (1938); Silverman, Municipal Real Estate Taxation as an Instrument for Community Planning, Yale L.J., Dec., 1947.

This principle of taxation has stood the test of time, and the taxpayers under this law generally, which law applies to some 4 million acres of the most desirable rural and urban land in California today

and occupied by more than a half million people, have had time to assay such resolutions, as the following by the Board of Directors of Oakdale Irrigation District in 1914:

> "Our experience has taught us that the more you relieve improvements from taxation, the quicker will the community improve. * * * Our farmers put the land to its highest use, the use that is most beneficial to the whole community; our system of taxation compels them to do this, and they reap a greater profit for themselves. * * * We make the man who keeps his land idle pay the same (tax) as the man who improves."

Viewed in this light, the California Irrigation District law is a rent control statute. The higher the annual ad-valorem land assessment, the less net rent will remain for any landlord to capitalize into price demanded for title deed to the land. The disallowance of the money lawfully belonging to petitioner, would have one effect, and one only. It would not affect the rent value of any land in this district, but would only increase the net rent, after taxes, which land speculators could and would capitalize in the price thereafter demanded for title deed to the land. Obviously, if the bond obligations of such a district are reduced, the annual ad-valorem land assessment can then be reduced correspondingly, and other things remaining equal, the price of title deeds to land rises.

Thus, the effect of the final decree, as applied, is not only to deprive petitioner of his statutory rights secured by the Constitution, but also to infringe the

equal right of all persons to acquire, use and hold land guaranteed by the 14th Amendment, as construed in the *Shelley* case, supra.

The land and tax laws of every State today discriminate against the landless, in favor of the landed. If the States are ever to obey the command in the 14th Amendment, their power to enact and apply such nondiscriminatory land tenure statutes as the California Irrigation District Act must be exercised and no delinquency in the lawful administration of the State's trust in such lands should be sanctioned by the Federal judiciary, whether with or without the consent of the State or the R.F.C.

ARGUMENT.

I. THE DISTRICT COURT ERRED IN PERMANENTLY RESTRAINING SUITS TO COMPEL THE ASSESSMENT AND COLLECTION OF AD-VALOREM LAND TAXES, REQUIRED BY APPLICABLE STATE LAW.

Respondent's duty to levy and collect land assessments is a continuing duty, differing basically from that created by ordinary special assessment statutes.

Farwell v. San Jacinto etc. I. D., 49 Cal. App. 167;

Rialto I. D. v. Stowell, 246 Fed. 294;

Am. Sec. Co. v. Forward, 220 Cal. 566 (affirmed sub. tit. *Irones v. Am. Sec. Co.*, 294 U. S. 692);

Provident v. Zumwalt, 12 Cal. (2d) 365;

Moody v. Provident, 12 Cal. (2d) 389.

The petition which forms the base of this proceeding sought an injunction "restraining * * * the levy of any tax or assessment * * * during the pendency of this proceeding * * *". (R. 4, Case No. 306.)

The injunction was granted and interlocutory decree was entered restraining suits "pending the entry of the final decree". (R. 53, No. 306.)

Manifestly the final decree not then having been prepared or entered, the question of whether this form of permanent injunction may be validly included in a final decree in a Chapter IX proceeding could not have been raised in the previous appeal from the interlocutory decree.

On receiving the form of the proposed final decree, petitioner duly filed specific objections to its form, especially "to that part of the proposed final decree which provides that the holders of certain bonds are restrained and permanently enjoined from asserting any claim or demand whatsoever * * *". (R. 5/21.)

Respondent ignored this objection, and contended the objections were "completely and wholly beside the point in question and the legal matter involved, namely the form of the decree." (R. 23.)

The District Court signed and filed the final decree without expressing any opinion in writing, and allowed the permanent injunction in the decree, over petitioner's timely objection. (R. 26.)

The Circuit Court ordered no change in the final decree, as requested upon appeal, and granted re-

spondent's motion to dismiss the appeal, without opinion on any of the points raised on appeal. (R. 65.)

Petitioner's objections to the motion to dismiss the appeal are printed. (R. 52/63.)

It is submitted that the permanent injunction, as applied in the final decree goes beyond the petition, and beyond the interlocutory decree, which allowed the injunction only "pending the entry of the final decree", and this permanent injunction, as applied to the valid, binding and unpaid bonds "* * * whether heretofore surrendered and cancelled or remaining outstanding, and by whomsoever held, are hereby cancelled, annulled and held for naught * * *" and providing that "the holders thereof be and they are hereby forever restrained and enjoined from otherwise asserting any claim or demand whatsoever * * *" (R. 31) is not warranted in law or equity.

Such an injunction can have one force and effect only, which is to restrain the assessment and collection of ad-valorem land taxes, contrary to the applicable and controlling State law, as construed and applied in the cases above shown.

This injunction, under the circumstances here, also conflicts with the applicable Federal bankruptcy statutes, in Sec. 64a, 67b, 83 c, i; 28 USCA § 41(1); 28 USCA § 124a; 11 USCA § 1; 40 USCA § 258a; Sec. 3466, R. S.; 28 USCA § 379; Rev. Stats. § 3224, 26 USCA § 1543; 11 Am. Jur., Conflict of Laws, § 30; Sec. 17, Comp. St. § 9601; Restatement of Conflict of Laws, Sec. 243.

An attempt to invoke Federal jurisdiction to enjoin waste and misuse of funds by district officials was not allowed in *Marra v. San Jacinto etc. Irr. Dist.*, 131 Fed. 780 (CCSD Cal. 1904).

The Supreme Court of California has decided that all land and property of an irrigation district is property owned by the State, dedicated for the uses and purposes of the Irrigation District Act, one of which is the payment of every bond in full. *El Camino v. El Camino*, 12 Cal. (2d) 378; *Shouse v. Quinley*, 3 Cal. (2d) 357. (Stat. 1943, Ch. 368, sec. 24504.)

Respondent is the alter ego of the State, without pecuniary rights, and hence its statutory land tax affairs are as immune from Federal interference or restraint, as the affairs involved in *Cargile v. N. Y. Tr. Co.*, 67 Fed. (2d) 585, 588 (CCA 8); *Ex parte Ayers*, 123 U. S. 443; *Phipps v. School District*, 111 F. (2d) 393; *In re Ingersoll Co.*, 148 F. (2d) 282 (CCA 10); *Ark. Corp. v. Thompson*, 312 U. S. 673, 313 U. S. 132; *Lyford v. N. Y.*, 140 F. (2d) 840 (CCA 2), affirmed in *Bankers Tr. Co. v. N. Y.*, 323 U. S. 714; *Gardner v. N. J.*, 329 U. S. 565.

Article IV, Section 31 of the California Constitution reads as follows:

> "The legislature shall have no power * * * to make any gift *or authorize the making of any gift of any public money* or thing of value to any individual, municipal or other corporation whatever." (Emphasis supplied.)

Article IV, Section 16 prohibits

> "* * * releasing or extinguishing in whole or in part, the indebtedness, liability or obligation of any corporation or person to this State, or to any municipal corporation therein."

The only effect of the injunction in this final decree would be to give "public money" lawfully belonging to petitioner, a *cestui que trust,* to the present holders of title and mortgages upon the taxable land within the District, because the future ad-valorem taxes would be reduced in the same amount as is taken from petitioner by the injunction. This would be violently objected to, if an action of a Federal Court had the effect of increasing ad-valorem land tax rates above the rate allowed by State law. There is no tax rate ceiling in the applicable State law here involved and no decision by this Court holds that it is permissible under any provision in the United States Constitution to increase or decrease ad-valorem State or local land assessments contrary to applicable State law and decisions.

> "We can not presume that the public policy of the United States manifests a lesser concern for the protection of such basic rights against discriminatory action of Federal Courts than against such action taken by the Courts of the States."
>
> *Hurd v. Hodge,* 68 S. Ct. 847.

The injunction in the final decree, as applied, deprives petitioner of his Constitutional and statutory rights secured by the Fifth and Tenth Amendments to the United States Constitution, upon the grounds

and for the reasons above shown, and it ought to be disallowed by this Court, not only for that reason, but for the equally important reason that it coercively interferes with the assessment and collection of direct ad-valorem land taxes required by the Constitution and applicable California laws and decisions of this Court and the controlling California cases.

II. THE LOWER COURT ERRED IN ORDERING THE FUND IN CUSTODIA LEGIS PAID TO THE BANKRUPT BEFORE ALLOWED CLAIMS ARE PAID IN FULL.

The final decree provision objected to under this point is shown in (R. 30) under heading subs. (b), (c). It offers petitioner the sum of $15,231.09 for his claim (with a present lawful value of over $50,000) on condition that he accept this amount within 12 months, and surrender his bonds and coupons within that time. After 12 months the money is given the bankrupt, irrespective of whether the allowed claims have been paid in full, or not. Thereafter, the holders of original bonds are "hereby forever restrained and enjoined" from asserting any claim or demand.

The original bonds owned by petitioner are in the possession of petitioner, and have never been submitted to the jurisdiction of the bankruptcy Court. This is shown by petitioner's proof of claim (R. 161, No. 306) as follows "* * * this proof of claim does not submit himself to the jurisdiction of this Court except for the special purpose of objecting to the jurisdiction of this Court."

They are valid, binding and unpaid statutory trust obligations, independent of and wholly unaffected by the 1934 contract between respondent and R.F.C.

Now petitioner has been told that he may have $15,231.09 for his statutory claim with a present lawful value of over $50,000, providing he accepts that offer within 12 months, and that otherwise the bankrupt is allowed to claim the fund in *custodia legis*, and is discharged from ever paying anything at all upon its still outstanding original bonds "affected by the plan". (R. 31.) If this was an eminent domain action and a landholder was offered a sum of money approved by the Court upon the condition that he take the money within one year, or else lose his land and receive no compensation, the harshness of this coercive provision in the instant decree would be self evident.

> "The authority conferred on this Court by Sec. 30 of the Bankruptcy Act to prescribe all necessary rules, forms, etc. * * * is plainly limited to provisions for the execution of the Act itself, and does not authorize additions to its substantive provisions."
>
> *Meek v. Contu Co. Banking Co.*, 268 U.S. 426.

There is clearly not any authority in the Act which forms the base of this proceeding, for such a time limit or coercive forfeiture provision. (11 USCA § 403.) Claims upon such a fund, once deposited *in custodia legis* can be paid only as authorized in Judicial Code, Secs. 851-852, Title 28 and in 11 USCA, Sec. 106, sub. b.

In the very recent case of *In re Searles,* 166 F.2d 475, the Second Circuit Court indicates that this Court has never passed upon the right of a discharged bankrupt to claim such a fund, while allowed claims on it are unpaid. The Court left no doubt that it believes a discharged bankrupt can not claim or get such money until after all allowed claims upon it are paid in full.

In *Louisville & R.R. Co. v. Robins,* 135 F.2d 704, the Fifth Circuit Court issued an exhaustive opinion upon the law governing similar funds placed *in custodia legis* under another Bankruptcy Act, which contained more specific provisions for the execution of the Act, than does Ch. IX:

> "A surplus of funds in custodia legis, arising *after payment of principal claims* in a bankruptcy, * * * may be devoted to payment of interest on such claims." (Emphasis supplied.)
>
> *Kiyoichi v. Sunrise,* 158 F.2d 490 (CCA 9).

In *Compton-Delevan I. D. v. Bekins,* 150 F.2d 526 (CCA 9), it was squarely held that such a fund, even when unclaimed within the 12 month time limitation in the final decree, should not have been given the bankrupt.

In *U. S. v. Greer Drainage Dist.,* 121 F.2d 675 (CCA 8), it was held that funds claimed by the District were funds "of the bondholders, the District being as to it (the fund) but a trustee for them."

This is also the law in California. *El Camino v. El Camino* and *Moody v. Provident, supra.*

> "The levying of State taxes upon the title of private landholders * * * impairs the exercise of no Federal function. The private holders of land never enjoy tax immunity as a right * * *"
>
> *Petition of S. R. A.*, 18 N.W.2d 442, affirmed *S. R. A. v. Minnesota*, 327 U.S. 558.

The objections to this coercive forfeiture provision were presented to the District Court (R. 5/7) and argued, with many citations. (R. 7/21.) Respondent did not answer this objection to the form of the proposed final decree, but merely said: "The writer is not replying to the brief directly, inasmuch as it is completely and wholly beside the point in question and the legal matter involved, namely, the form of the decree." (R. 23.) In his reply brief, petitioner commented, "The bald contention that the proposed final decree 'is in conformation with the decisions of the U. S. Supreme Court', without any supporting citations, is mere wishful hoping." (R. 25.)

> "To effect a forfeiture, which the law does not favor, the evidence must be clear and convincing and must not call upon a Court of equity to do an inequitable thing."
>
> *Hendrix v. Altman Lbr. Co.*, 145 F.2d 501 (CCA 5).

The forfeiture provision in the final decree is clearly not authorized for the execution of Ch. IX of the Bankruptcy Act, it is not warranted by any statute or decision by this Court, and it is prejudicial to petitioner's statutory right to bring suit in a State Court to compel the assessment and collection of taxes

to pay his statutory trust claim according to applicable State law. The State of California, unlike a private bankrupt, is entitled to no Federal protection against holders of its lawful statutory obligations, or of its political subdivisions. The State itself could prohibit suits, and successfully get out of paying its bonds, without Federal coercive jurisdiction or intervention. *Monaco v. Mississippi,* 292 U.S. 313.

Therefore, it is submitted that the 12 months' forfeiture provision in the final decree ought to be stricken by this Court.

III. CHAP. IX OF BANKRUPTCY ACT ALLOWS NO COERCIVE JURISDICTION OF THE BANKRUPT OR OF MINORITY CREDITORS.

Paradise Irrigation District is the State itself operating through the District in the performance of a Constitutional State function. The object is to reclaim and make more fruitful otherwise arid or semi-arid lands, and insure the equal opportunity for farm, orchard and home seekers to acquire, use and hold good land, with a dependable supply of water.

When bonds are voted and sold, the bonds constitute a general obligation payable from unlimited annual assessments upon all the land within the District. When all landholders pay this assessment, the obligations of the District can be promptly paid, when lawfully due. When any land assessment is not paid, ownership revests in the District, and if not paid within three years thereafter, the privilege of re-

demption is at an end. Thereupon, the District has full authority to administer the land as a beneficent landlord, and collect its rents, issues and profits, and the rent collected is equally subject to the obligation in any outstanding bonds. The land itself is not lost, either to the District or to the bondholder, because if resold, it again becomes subject to assessment until all bonds are paid.

The Irrigation District Act is a complete statute, providing fully for the creation of the District, the ownership and devolution of land, the payment of lawful obligations, and dissolution of every District.

The force and effect of this law is in no manner changed by reason of the fact that the collection of certain assessments for some years was slow. The law protects the rights of the holders of each and every bond equally, and allows no majority to deprive the holder of even one bond of his statutory claim. *Selby v. Oakdale I.D.; Provident v. Zumwalt,* supra.

> "A State is free to pursue its own fiscal policies, unembarrassed by the Constitution, if by the practical operation of a tax the State has exerted its power in relation to opportunities which it has given, to protection which it has afforded, to benefits which it has conferred by the fact of being an orderly civilized society."
>
> *Wisc. v. J. C. Penney Co.* 311 U.S. 435, 438.

The coercive jurisdiction, as applied in the instant final decree involves nothing less than a surrender of the sovereign taxing power of California, when exercised, to a feudal class.

"Behind the words of the Constitutional provisions are postulates which limit and control. There is the essential postulate that the controversies, as contemplated, shall be found to be of a justiciable character. * * * The entire judicial power granted by the Constitution does not embrace authority to entertain such suits in the absence of the State's consent."

Monaco v. Miss., supra.

But here, the coercive jurisdiction objected to is bottomed on the bankruptcy clause, which needs no State consent, wherever it can reach without State's consent. Ch. IX, the base of this proceeding, contains "an express requirement that nothing shall be agreed on which the State law does not enable it to do." *Mission S. D. v. Tex.*, 116 F.2d 175 (CCA 5).

"An insolvent Mississippi Drainage District is not subject to having its affairs administered by a Federal Bankruptcy Court under Sec. 401, since State consent that District affairs may be so administered is indispensable."

Evans v. Bankston, 18 So.2d 301.

In *Spellings v. Dewey*, 122 F.2d 652 (CCA 8), an attempt to apply coercive jurisdiction to the bankrupt District, was disallowed under Ch. IX.

But, in *In re S. Beardstown Dr. Dist.*, 125 F.2d 13 (CCA Ill.), another Circuit Court holds that no State consent is needed, under Ch. IX.

The sovereign power of a State to tax land, when exercised, is supreme. *Adirondack Ry. v. N. Y.*, 176 U.S. 335; *Nashville etc. Ry. v. Browning*, 310 U.S.

362; 61 *Corpus Juris,* 76, 83, 84; *Pollard v. Hagan,* 3 How. 212.

The statutory claims of petitioner are dated 1917 and 1920. Hence the so-called State consent in this proceeding (Stat. 1939, Ch. 72):

(a) constitutes retrospective legislation and an impairment of contract, prohibited by other provisions of the Federal Constitution;

(b) attempts to delegate authority not otherwise provided in the Constitution, and in a manner not authorized;

(c) is not a consent of a State to be sued nor the consent to or waiver of a State right, but the effort to exercise authority otherwise prohibited to the State —the repudiation of its own statutory contract. In such circumstances, the consent is not a "waiver of sovereignty", but a surrender of sovereignty, prohibited by the California Constitution, Art. I, sec. 16.

The obligation of such a contract is impaired when any part of it is dispensed with by subsequent legislation. *Green v. Biddle* (1823), 8 Wheat. (21 U.S.) 1, 84.

Since the obligation of a contract includes the means by which it is to be paid, the "judicial department can not prescribe to the legislative department limitations upon the exercise of its acknowledged powers." *Meriwether v. Garrett,* 102 U.S. 472; *Von Hoffman v. Quincy* (1886), 4 Wall. (71 U.S.) 535; *Brown Crummer v. Paulter,* 70 F.2d 184 (CCA 10, 1934).

It has long been held that the express authority to exercise Federal Bankruptcy jurisdiction in fields allowed by the Constitution is "unlimited and supreme" (*Sturges v. Crowninshield,* 4 Wheat. 122 at 192); "unrestricted and paramount" (*Int. Shoe Co. v. Pinkus,* 278 U.S. 261, 265); or "plenary" (*Hanover Nat. Bank v. Moyses,* 186 U.S. 181, 187).

The jurisdiction of State Courts can not be subjected to orders of a Federal Court, to restrain or enjoin the assessment and collection of land taxes required by State law. *Ark. Corp. v. Thompson,* and *Gardner v. N. J.,* supra, *Billings v. Ill.,* 188 U.S. 97, 102.

The immunity of a State's power to tax land, when exercised, was not modified, but was reaffirmed by this Court in *U. S. v. Bekins,* 304 U.S. 27. (*"Mun. Debt Adjustments under the Bankruptcy Act",* Univ. Pa. Law Review, March, 1942, by Giles J. Patterson, Esq.)

In *Coyle v. Smith,* 221 U.S. 559 at 572, is a discussion on the futility of an attempt to enlarge the powers of Congress by consent of a State. See also *Federalist Papers,* 12, 30 to 36, 80, 81, by Hamilton.

In *Hopkins, etc. v. Cleary,* 56 Sup. Ct. 235, it was stated:

> "Aside from the direct interest of the state in the preservation of agencies established for the common good, there is thus the duty of the parens patriae to keep faith with those who have put their trust in the parental power."

The conflict between the interpretation of Ch. IX jurisdiction in the different Circuits, as above shown, and the fundamental function of the State which is interfered with by the injunction in the final decree below, present an important question which petitioner here raises, as an actual controversy, as the bona fide owner of valid, binding and unpaid statutory obligations, which are still in full force and effect under State law, and decisions.

IV. THE DENIAL OF DISCHARGE IN THE PRIOR CASE IS RES ADJUDICATA.

The identical plan of composition was filed January 14, 1936 in the same U. S. District Court. The petition was disallowed, discharge of respondent was denied, and no appeal was taken. (R. 86/89, Case No. 306.)

> "J. R. Mason appeared and filed an answer setting up the unconstitutionality of the Act and substantially the same defenses that he has set up in this pleading. He also filed a Motion to Dismiss, and this Court on October 28, 1936, entered a judgment of dismissal which has never been appealed from and is now final." (R. 88, No. 306.)

This judgment in favor of J. R. Mason is *res adjudicata* under the rule laid down in *Chicot Co. D. D. v. Baxter State Bank,* 308 U.S. 371, at 377:

> "There can be no doubt that if the question of the constitutionality of the statute (11 USCA 301-304) had actually been raised and decided by

> the District Court in the proceeding to effect a plan of debt re-adjustment in accordance with the statute, that determination would have been final save as it was open to direct review upon appeal."

More recently the Ninth Circuit Court ruled squarely in the case of *Shepherd v. McDonald,* 157 F.2d 467:

> "* * * denial of a discharge from the debts provable, or failure to apply for it within the statutory time, bars an application in a second proceeding for discharge from the same debts."

Thus, had petitioner ignored the petition filed by respondent in 1936, it could be effectively pleaded against petitioner now.

The instant, second petition, seeking to bludgeon petitioner into accepting the same plan of composition, was filed November, 1937. (R. 1, No. 306.)

The District Court, prior to the *Chicot County,* supra, rule, announced by this Court, refused to hold the prior judgment *res adjudicata,* saying:

> "That this Court finds that said proceeding so dismissed was based upon a law wholly null and void, and which conferred no jurisdiction upon the Court * * * and that petitioner herein is not barred in this proceeding by res adjudicata, or otherwise." (R. 38/39, No. 306.)

This same point was raised, and argued under Ninth Proposition, in petitioner's opening brief in the Circuit Court, under the heading "The discharge, as

applied, conflicts with the denial of discharge from the same debts, and which is res adjudicata".

The Circuit Court failed to express any opinion on the point, and it is respectfully requested that this Court give petitioner the protection that respondent would be entitled to, under the *Chicot* case, if the table was turned. The prior determination was final, and this proceeding involves a matter that is *res adjudicata,* and it ought to be dismissed, in favor of petitioner, whose vested statutory rights are not questioned. (R. 138/157, 162/163, No. 306.)

V. THE CIRCUIT COURT ERRED IN SUMMARILY GRANTING THE MOTION TO DISMISS THE APPEAL.

It is well settled that only lack of jurisdiction, or a defect in the steps taken to effect the appeal are grounds justifying the dismissal of an appeal upon a motion to dismiss. On a motion to dismiss the appeal, the Court does not look into the merits, but only examines the record for the purpose of seeing if the appeal was properly taken, and if the Court has jurisdiction. The cases so holding are uniform. *Hecker v. Fowler,* 1 Black. 95; *Sparrow v. Strong,* 3 Wall. 97; *Bohanan v. Nebraska,* 118 U.S. 231; *Lanier v. Nash,* 122 U.S. 630.

It was further shown, and not denied, that respondent wholly lacks the power to file such a motion, under the circumstances involved. (R. 52/63.)

Respondent filed no reply brief, while petitioner's brief had been printed and filed on April 9, 1948. (R. 63.)

The granting of the motion to dismiss, without opinion upon the points presented in the appeal (R. 64/65) was adverse to petitioner's rights, and he appeals to this Court for such protection as to it may seem proper and just.

SUMMARY.

The California Irrigation District Act is a land law, the full operation of which could never infringe the equal right of all persons to acquire, use and hold land, guaranteed by the 14th Amendment, as recently construed by this Court in the *Shelley v. Kraemer* case (May 3, 1948). But, the decree below, if it should be allowed to stand, will only serve to make this non-discriminatory land law, discriminatory, because the money taken from petitioner by the federal Court, will enrich only those now holding title to land in the community, and whose land taxes will be lessened by the amount taken from petitioner. If the command in the 14th Amendment is ever to be made practical, the sovereign power of the states to control the private tenure and devolution of land within its domain, must remain "independent and uncontrollable". (The Federalist, Essays, XII, XXX to XXXVI, Hamilton; 2 Vattell, Law of Nations (1883),

c. 8, §114; *Blythe v. Hinckley,* 180 U. S. 333, 341; *Heine v. Lev. Comm.,* 19 Wall. 655; *Road etc. v. M. P. R. Co.,* 274 U. S. 188.)

The mass strength of the feudal interests to circumvent any judgment by this Court that does not meet with their approval is great. The attacks on this Court in press and radio, after decision in the *U. S. v. California,* 332 U. S. 19 case is some indicator. When any law or decision strengthens feudal privileges little or no criticism is heard.

In "Fascism in Action" (House Document 401, 80 Cong. 1st Sess.), page 67, is reported:

> "Under Hitler, the efficient tax structure was centralized in the Reich, as distinguished from the Laender (States) and local units. The system was coordinated with Nazi grand strategy and further centralized. Administration was considerably tightened. It was directed that the tax laws should be interpreted in accordance with the national-socialist Weltanschauung; this became a source of very broad discretionary power."

This refers to the Reconstruction Act (Neuaufbaugesetz) of January 30, 1934, which provided in Article 1, "The representative assemblies of the States are abolished". Article 2 provided, "The sovereign rights of the States are transferred to the Reich".

In view of the fact that the Congress has exempted private holders of land from direct ad-valorem taxes for support of the Federal Treasury ever since Chap. 21, Laws 13th Cong., Jan. 9, 1815, except for Chap.

45, Laws 37th Cong., Aug. 5, 1861, which was quickly repealed, and in view of the widespread speculation in land, of which this Court may take judicial notice, it is certain that the investing public, and speculators think land title deeds a more promising investment than an investment in the field of production and distribution.

This may well be because they know that there is no federal tax on land held idle, and further that any state or local taxes which are paid, are deductible from the top bracket of federal income tax returns.

It is interesting that our first Chap. IX of the Bankruptcy Act was enacted the same year, 1934. (11 USCA §§301-304.) It was disallowed by this Court. (298 U. S. 513.) This doctrine of immunity was reaffirmed in *Brush v. Comm.,* 300 U. S. 352, 366-369, as to California irrigation districts. But, respondent was not convinced, and took another appeal, which was denied in *Merced I. D. v. Bekins,* 302 U. S. 709.

In the petition for a rehearing filed in *Pacific Nat. Bank v. Merced I. D. No. 591,* Oct. Term, 1940 by petitioner it was suggested (p. 13):

> "With the much heavier tax burdens now facing the people, plus the still heavier mortgages and private debts, it is petitioner's conviction that an enlargement of the bankruptcy power to include the taxing and borrowing power of the States, must prove more an aggravation than a cure, increasing the danger of inflation and the cost of National Defense."

Petitioner has filed many other petitions with this Court, in an effort to prevent the same centralization of power here, that proved so disastrous to the German people, and all people by World War II.

That some prominent men in public life now are taking alarm is shown by the testimony of Honorable Earl Warren, Governor of California, in Joint Hearings, re S.1988 (Tidelands Bill), 80th Cong., 2d Sess., p. 74:

> "We are asking Congress to confirm to us the fundamental State's rights which are essential to to the virility of the Republic. I am a believer in a strong central government within the limits of the Constitution, but I do not believe that the Federal Government should encroach upon the powers which were reserved to the States by the 10th Amendment to the Constitution."

Our late President F. D. Roosevelt said at Gainesville, Ga., March 23, 1938:

> "When you come down to it, there is little difference between the feudal system and the fascist system. If you believe in one, you lean to the other. With the overwhelming majority of the people I oppose feudalism * * *."

The "still outstanding obligations" consisting of $29,000 original, unrefunded gold bonds of Paradise Irrigation District owned by petitioner are constitutional and statutory land tax anticipation trust certificates, constituting a first charge upon the rents, issues and profits of all land within the district, un-

til they are paid, with statutory 7% interest if any payment is not made when lawfully due.

These obligations have never been surrendered by petitioner to bankruptcy jurisdiction, and petitioner's claim was filed only for the purpose of objecting to federal jurisdiction.

It is submitted that the bankruptcy clause, like other provisions in the Constitution must be read in conjunction with the 10th Amendment to the Constitution, which amendment presupposes the retention by the states of certain powers that historically belonged to the states. The bankruptcy clause does not extend to the power of a state to regulate and control the private tenure of land within its sovereign domain, provided its laws meet the equal protection requirement of the 14th Amendment, and that they do not restrain commerce between the states. There is no infringement of the Federal Constitution possible from the unrestrained operation of the venerable state land law supporting petitioner's claim.

But, the restraint in the District Court decree, not only serves to bring this law in conflict with the equal protection clause, but also deprives petitioner of his claim, contrary to the 5th and 10th Amendments, unless the jurisdiction allowed by Ch. IX is paramount to state powers in this relation. California lacks neither power nor duty to regulate the private tenure and rent of land within its domain, and is in no more need of federal intervention or restraint than the Congress needs state intervention to protect federal taxpayers or the holders of federal bonds.

James Madison understood the fundamental difference between Totalitarianism, and a Constitution which protects the basic equal rights of all persons.

He warned clearly against permitting any private interest trespassing the equal rights of every person, whether serf or a feudal lord of the land. Every Community, State and Nation has its conflicting economic pressure groups. When any one economic interest is allowed to acquire special privilege and paramount power, the political structure can not long endure. This is the lesson of all history. The fundamental question involved in the instant petition is whether our laws allow private holders of restricted trust land within the dominion and sovereignty of a State to keep others from having an equal opportunity to acquire, use and hold land. The evasion of ad-valorem land taxes, with or without the consent of a State Legislature, involves a denial of the equal protection guaranteed to all persons, including those now without any land.

The Homestead Act of 1862 also undertook to protect the equal rights of the landless, as the rock upon which the family farm would survive. In the debates, this purpose was expressed in these terms:

> "Instead of baronial possessions, let us facilitate the increase of independent homesteads. Let us keep the plow in the hands of the owner. Every new home that is established, the independent possessor of which cultivates his own freehold, is establishing a new republic within the old, and adding a new and a strong pillar to the edifice of the State."
>
> *Cong. Globe,* 37 Cong., 2d Sess., pt. 2, p. 1031.

The growing struggle for control of irrigated California land is partly revealed in *Hearings, Senate Public Lands Comm.,* 80th Cong., 1st Sess., on S. 912, "A Bill exempting certain projects from the land limitation provisions of the Federal Reclamation Laws," pp. 84/128, 991/1111.

Congress has authorized the Secretary of the Interior to contract with Irrigation Districts. (Acts of Feb. 21, 1911, 36 Stat. 925; Aug. 11, 1916, 39 Stat. 506; June 12, 1917, 40 Stat. 105; May 15, 1922, 42 Stat. 541; 43 Stat. 672, 43 U.S.C. 396.) Many such contracts have been made, and the recovery of many millions of Federal funds depends on the virility of the California Irrigation District Act, which also secures the claim of petitioner.

CONCLUSION.

It is submitted that a writ of certiorari should be granted, the decree of the Court below reversed and the proceeding directed to be dismissed.

Dated, San Francisco, California,
July 14, 1948.

Respectfully submitted,
J. R. MASON,
Petitioner, Pro se.

INDEX

CITATIONS

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1948

No. 177

J. R. MASON,
Petitioner,
vs.
PARADISE IRRIGATION DISTRICT,
Respondent.

PETITIONER'S REPLY TO BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Comes now J. R. Mason, petitioner pro se submitting his reply brief in the above entitled cause.

It is vigorously denied that "all points raised by petitioner in his petition were decided in the action of *Mason v. Paradise I. D.* (supra)," as contended by respondent's brief, on page 3.

The only question presented and adjudicated in the appeal from the interlocutory decree was that the principle of equality between creditors applied in the *Texas v. Tabasco School District* cases, 133 F.2d 196, 142 F.2d 58, would be modified.

The constitutional questions presented in this appeal from the final decree did not exist before the entry of the final decree, and it would have been premature to present them as an actual controversy before the provisions in the final decree are known. Appeals from both interlocutory and final decrees in Chapter IX proceedings are authorized.

It is respectfully submitted that respondent has cited no Federal authority which allows a State, or any of its political subdivisions to violate the taxing and land tenure statutes of the State, over the complaint of a holder of valid, binding and unpaid statutory claims.

Respondent has not questioned the following crucial statements in the instant petition:

> "The California Irrigation District Act is a land law, the full operation of which could never infringe the equal right of all persons to acquire, use and hold land, guaranteed by the 14th Amendment, as recently construed by this Court in the *Shelley v. Kraemer* case. But, the decree below, if it stand, will only serve to make this non-

discriminatory land law discriminatory * * *". (Page 37.)

"Respondent has no standing or authority to invoke the bankruptcy jurisdiction in order to escape its duty to assess and collect the ad-valorem land assessments made mandatory by applicable State law." (Page 17.)

"The land in Paradise Irrigation District is all within the dominion and sovereignty of California and the power of California to control its private ownership and devolution is paramount." (Page 17.)

"Respondent is the alter ego of the State, without pecuniary rights, and hence its statutory land tax affairs are as immune from Federal interference, as the affairs involved in (cases cited)." (Page 23.)

"The Supreme Court of California has decided that all land and property of an irrigation district is property owned by the State, dedicated for the uses and purposes of the Irrigation District Act, one of which is the payment of every bond in full." (Page 23.)

The original, unrefunded bonds owned by petitioner "are valid, binding and unpaid statutory trust obligations, independent of and wholly unaffected by the 1934 contract between respondent and R.F.C." (Page 26.)

The judgment of dismissal in favor of J. R. Mason "is res adjudicata under the rule laid down in *Chicot County D.D. v. Baxter State Bank*, 308 U.S. 371." (Page 34.)

Petitioner's bond obligations

> "are constitutional and statutory land tax anticipation trust certificates, constituting a first charge upon the rents, issues and profits of all land within the district, until they are paid, with statutory 7% interest * * *". (Page 40.)

The permanent restraint, applied for the first time in the final decree is

> "in conflict with the equal protection clause," and "deprives petitioner of his claim, contrary to the 5th and 10th Amendments * * *". (Page 41.)

The interlocutory decree only restrained the holders of original bonds

> "from attempting collection * * * by legal proceedings or otherwise * * * *pending the entry of the final decree.*" (R. 53, Case No. 306.) (Italics ours.)

The only point considered in the *Mason v. Paradise*, 326 U.S. 536, case was that the rule of equality applied in *Texas v. Tabasco School District* (supra), by the Fifth Circuit should be modified.

Thus the argument by respondent, at page 13, that this Court has previously decided "In the *Mason* case (supra)" that the *permanent* injunction in the *final* decree is not an error, is vigorously denied. Such an injunction had not been entered by the District Court before the final decree, and it goes beyond the interlocutory decree provision for an injunction "pending the entry of the final decree". Respondent has shown no provision in any chapter of the Bankruptcy Act,

including Chap. IX the base of this proceeding, which authorizes the *permanent* injunction, as applied by the Court below, and which contravenes the Federal statute shown on page 22 of petitioner's brief, and controlling decisions by this Court, listed on page 23.

If it were true, as respondent contends, that "There is nothing further to be decided by this Court than was decided by it in the said *Mason* case" (page 13) a District Court could impose penalties in a final decree from which no appeal could be taken either by a creditor or by the bankrupt, and it could confiscate statutory claims which are secured by the Constitutions of Nation and State, as here.

Even had the fundamental constitutional questions presented in the instant petition, been raised in the appeal from the interlocutory decree, the fact that they were not decided by this Court would allow them to be asked again. Appeals from final as well as from interlocutory decrees in a Chap. IX proceeding are authorized.

The permanent injunction, as applied in the final decree contravenes the 5th and 10th Amendments, because petitioner is restrained from proceeding in the State Court to force State officials to assess and collect the land value taxes required by applicable law, and to obey California law, as construed by the California Supreme Court, and by controlling decisions of this Court, commencing with *Fallbrook I. D. v. Bradley,* 164 U.S. 112, to *Cowan v. Fallbrook,* 320 U.S. 735.

Respondent does not suggest that its taxing power is inadequate to pay petitioner's claim, and offers no showing that the applicable California law permits it to fix any annual assessment or tax rate lower than is necessary to pay all valid obligations due, or to become due the following year. In refunding its obligations, even if all creditors except one have consented, the California law prohibits respondent from making any attempt to escape paying the bonds of that one creditor, in the order provided by statute. *Selby v. Oakdale I. D.*, 140 C. A. 171; *Provident v. Zumwalt*, 12 Cal. (2d) 365. Respondent does not deny that its duty and obligation to petitioner, in this respect is a continuing statutory duty, as pointed out on page 20 of the instant petition.

It has been clearly and unequivocally decided by this Court that the private holders of land in such a district "have no constitutional right to be heard on the question of benefits." *Fallbrook v. Bradley*, 164 U.S. 112; *Valley Farms Co. v. Westchester*, 261 U.S. 155; *Roberts v. Richland I. D.*, 289 U.S. 71.

In *Rittenoure v. City of Edinburg*, 159 F.2d 989, the Fifth Circuit Court pointed out that

> "* * * by 11 USCA § 22 a municipal corporation is excluded from the general bankruptcy law, even as a voluntary bankrupt. The proceeding here involved was under Chapter 9, which is a special extension of the Bankruptcy Act to local taxing districts whereby they may seek a composition of their debts; * * * Such a proceeding, while within the bankruptcy powers of the United States, is not a true bankruptcy in that the prop-

erty of the debtor is not surrendered to the Court *nor are its debts discharged.*" (Italics ours.)

The constitutional protection for investors in lawful bonds issued by a State, or its local bodies has been construed and applied by this Court so often that citations are unnecessary. In the Yale Law Journal, Vol. XLIII, No. 6, is a well documented article reviewing "Administration of Municipal Credit", with scores of citations, and a chapter on "Rights of Creditors after default" on pp. 962-978. As said in *Thompson v. Magnolia Petr. Co.*, 309 U.S. 478, at 481,

> "The Court erred in entering the final decree because it has no summary jurisdiction to adjudicate a controversy to property of which the Court has neither actual nor constructive possession."

Respondent quotes from the opinion of the District Court on the Fourth Point, at page 11. The *Chicot* opinion of this Court on *res adjudicata* had not been issued on March 16, 1939, the date of the District Court hearing. (R. 26/39; Case No. 306.) This finding of the District Court that the original Chap. IX "conferred no jurisdiction upon the Court" (R. 38; No. 306) is in direct conflict with the subsequent announcement by this Court in the *Chicot County* (308 U.S. 371) case, because "the question of the constitutionality of the statute" was actually raised and decided by the District Court, and that determination was final, from and after the time allowed for "direct review upon appeal." (308 U.S. at 377.) The judgment of dismissal of the previous composition pro-

ceeding shows explicitly that the question of the constitutionality of the federal statute was actually raised and decided in 1936 by the District Court, as follows:

> "* * * it appearing to the Court that said provisions of the Bankruptcy Act of 1898 are unconstitutional and void and that the Court is without jurisdiction to entertain the petition for readjustment and settlement of the indebtedness of said Paradise Irrigation District, and good cause appearing therefor," the petition to get approval of the same plan, between the same parties, as here, was dismissed on October 28, 1936. The judgment of dismissal "has never been appealed from and is now final." (R. 88/89; Case No. 306.)

Respondent complains that "This litigation commenced in December, 1937." Petitioner submits that it commenced on December 21, 1935, and was terminated Oct. 28, 1936, under the controlling rule in the *Chicot* case, supra.

In *Commissioner v. Sunnen,* this Court announced on April 6, 1948:

> "Res judicata rule provides that when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and their privies are thereafter bound 'not only as to every matter which was offered to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.' (Citations.) The judgment put an end to the cause of action, which can not again be brought into litigation between the parties upon any ground whatever,

absent fraud or some other factor invalidating the judgment * * *

But matters which were actually litigated and determined in the first proceeding can not later be re-litigated. Once a party has fought out a matter in litigation with the other party, he can not later renew the duel."

Respondent has during more than eleven years been attempting to relitigate, and renew the duel he lost on October 28, 1936. It is evident that respondent seeks to ignore the proceeding begun December 21, 1935, involving the same parties and the same attempt to repudiate the valid, binding and unpaid statutory claims owned by petitioner, paying for them only 52.521 cents, without interest. (R. 87/88; Case No. 306.) This litigation was brought to a conclusion on October 28, 1936, according to the controlling *Chicot County* decision by this Court. It is respondent, and not petitioner who has been seeking all these years to proceed just as though this Court had adopted the principle announced by the Circuit Court in the *Chicot County* case.

That respondent abandoned its plan of composition, after October 28, 1936, is evidenced by the payments of interest to petitioner on December 8, 1936, and January 5, 1937, totalling $3,055.95. This interest was "voluntarily paid by the District to Mason." (Respondent's Brief, pp. 7/8.)

Thereafter it was impossible to renew the plan. (R. 156; Case No. 306.) This is shown by the "Amend-

ment to Interlocutory Decree". (R. 200/201; Case No. 306.)

Respondent does not deny that "Both principal and interest upon the contract between respondent and the R.F.C. have been fully and regularly paid all these years, while the money due petitioner has been *unlawfully* denied him and given to the R.F.C." (Page 16.)

The fundamental issue underlying this litigation has been obscured, often deliberately, by a smoke screen of propaganda the effect of which has been to intensify class conflicts by denouncing the owners of public bonds who refused to be bludgeoned or to waive their rights protected by the Constitution, as "Shylock, demanding his pound of flesh", and as "recalcitrants" when they invoke their constitutional rights, as construed by this Court in such cases as *Von Hoffman v. Quincy*, 4 Wall. (71 U.S.) 535; *Fallbrook v. Bradley*, 164 U.S. 112; *Roberts v. Richland I. D.*, 289 U.S. 71.

As this Court said in *Poindexter v. Greenhow*, 114 U.S. 269 (*Virginia Coupons* case):

> "Of what avail are written constitutions if their limitations and restraints upon power may be over passed with impunity by the very agencies created and appointed to guard, defend and enforce them? * * * How else can these principles of individual liberty and right be maintained, if, when violated, the judicial tribunals are forbidden to visit penalties upon individual offenders, who are the instruments of wrong, when-

ever they interpose the shield of the State? The doctrine is not to be tolerated. The whole frame and scheme of the political institutions of this country, State and Federal, protest against it. Their continued existence is not compatible with it. *It is the doctrine of absolutism, pure, simple and naked; and of communism, which is its twin; the double progeny of the same evil birth.*" (Italics ours.)

The concept that the State is a sovereign the basic duty of which is to protect the equal right of all persons to use and hold land, was a revolutionary idea. The notion that all persons have an equal and inalienable right in respect of land tenure was wholly foreign to other forms of government.

Respondent has pointed out no error in petitioner's discussion of this economic principle dealt with under "Factual Background" at pages 11 to 20, where it is shown at page 19 that the California Irrigation District Act is, in legal and practical effect a State Rent Control statute, as follows:

> "The disallowance of the money lawfully belonging to petitioner would have one effect, and one only. It would not affect the rent value of any land in this district, but would only increase the net rent, after taxes, which land speculators could and would capitalize in the price thereafter demanded for title deed to the land. Obviously, if the bond obligations of such a district are reduced, the annual ad-valorem land assessment can then be reduced correspondingly, and other things remaining equal, the price of title deeds to land rises.

> Thus, the effect of the final decree, as applied, is not only to deprive petitioner of his statutory rights secured by the Constitution, but also to infringe the equal right of all persons to acquire, use and hold land guaranteed by the 14th Amendment, as construed in the *Shelley* case, supra."

Franklin D. Roosevelt said we would be

> "safe from the danger of oligarchy just so long as the home rule in the States is scrupulously preserved and fought for whenever it seems in danger."

On another occasion he said that

> "it was clear to the framers of the Constitution that the greatest possible liberty of self government must be given to each State, and that any national administration attempting to make all laws for the whole nation * * * would inevitably result at some future time in a dissolution of the Union itself."

The historian John Fiske said:

> "If the day ever arrives (which God forbid) when the people of the different parts of our country shall allow their local affairs to be administered from Washington—on that day the progressive political career of the American people will have come to an end and the hopes that have been built upon it for the future happiness and prosperity of mankind will be wrecked forever."

In *Great Lakes Dredge v. Hoffman,* 319 U.S. 293, it is said:

"The scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it * * *".

In *Twining v. N. J.*, 211 U.S. 78, 106, it was said:

"We are not invested with the jurisdiction to pass upon the expediency, wisdom or justice of the laws of the States as declared by their courts, but only to determine their conformity with the Federal Constitution * * *".

In the instant case, petitioner is the only party complaining that because of its operation and application in this particular instance, Ch. IX of the Bankruptcy Act works a violation of a constitutional right.

No party has been heard to complain, nor could any validly complain that a reversal would infringe their constitutional right.

Petitioner has sought, these many years, to defend basic principles of constitutional law as construed and applied by this Court, not alone because of his rights, but also in an effort to defend and advance the equal right of all persons to acquire, use and hold the dedicated trust land within the boundaries of respondent, as that equal right to hold land was construed by this Court May 3, 1948, in the *Shelley* case.

There has long been, and is a titanic struggle to monopolize such desirable irrigated California land.

Hearings, S. 912, Senate Public Lands Comm., 80th Cong., 1st Sess., May, June, 1947, contain over 1300 pages of testimony, and Hearings, H. Res. 93, House Public Lands Comm., September, 1947.

The Federal government is investing about $2,000,000,000 in the further reclamation of land in the valley respondent is located in, and if monopolists are to be held in check, and the Federal treasury recover its outlay, it will be because this Court adheres steadfastly to fundamental law, as construed and applied in the cases cited in the instant petition and brief of petitioner.

It is respectfully prayed that the petition be allowed, in order that petitioner be granted the protection which is just and proper, as prayed for in the petition.

Dated, San Francisco, California,
September 10, 1948.

Respectfully submitted,
J. R. MASON,
Petitioner, Pro se.

Subject Index

Table of Authorities Cited

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1948

No. 177

J. R. MASON,
Petitioner,
vs.
PARADISE IRRIGATION DISTRICT,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI to the United States Circuit Court of Appeals for the Ninth Circuit.

Comes now the respondent, Paradise Irrigation District, and files its opposing brief to the petition of petitioner.

STATEMENT.

This case was before this Court heretofore upon an appeal from a decision of the United States Circuit Court of Appeals for the Ninth Circuit, affirming the interlocutory decree of the United States District Court, Northern District of California, Northern Division of California, and this Court upon January 17, 1946, rendered its decision affirming the decision of the United States Circuit Court.

Mason v. Paradise Irr. Dist., 306 U.S. 536, 66 S. Ct. 290.

Following this Court's decision above, the mandate of the Circuit Court was sent down to the District Court, and the District Court entered its final decree in bankruptcy, upon September 24, 1947 (Tr. 32). It is from this final decree that petitioner appealed to the United States Circuit Court of Appeals for the Ninth District. Thereafter Paradise Irrigation District, appellee in the Circuit Court and respondent herein moved to dismiss the appeal on the grounds that all matters raised by appellant were decided in the case of Mason v. Paradise Irrigation District (supra), and following oral arguments upon the motion to dismiss, the Circuit Court entered its order affirming the final decree of the District Court (Tr. 46). It is as to this decision of the Circuit Court that petitioner is seeking to secure a writ of certiorari.

REASON WHY WRIT SHOULD BE DENIED.

The writ of certiorari requested by petitioner should be denied because all points raised by petitioner in his petition were decided in the action of Mason v. Paradise Irrigation District (supra), and as to them the decision of the Supreme Court is *res adjudicata*.

In connection with the claims of respondent, the writer deems a brief chronological review of the proceedings will be determinative as to the merit of the petition.

In December 1935 the respondent District filed in the United States District Court, Northern District of California, Northern Division, a petition for debt readjustment under and pursuant to the provisions of paragraphs 78-80 of the Bankruptcy Act added by act of May 24, 1934, 11 U.S.C.A., Sections 301-303, the object of the petition being to confirm a plan of readjustment of the District's outstanding bonded indebtedness, which plan is substantially the same as the plan set forth in its petition for debt composition referred to in the succeeding paragraphs. On May 25, 1936, the Supreme Court of the United States in the case of *Ashton v. Cameron Co. Water Impr. District*, 298 U.S. 513, 80 L. Ed. 1309, held the sections involved under which the petition was filed, to be unconstitutional. The petitioner herein, J. R. Mason, being an owner of outstanding bonds of the District, moved the District Court to dismiss the petition, following the decision above mentioned and said petition was dismissed by the District Court upon October 28, 1936.

The present proceedings were initiated by the District petitioning the District Court under Public Act No. 302-75 of Congress, Chapter 657, 1st Session, approved August 16, 1937, which act was an amendment to "An act to establish a uniform system of bankruptcy throughout the United States" as approved July 1, 1898, for a composition of its bonded indebtedness.

In the papers forwarded to the Supreme Court in respect to the present petition were included "all that portion of the records in this Court which was transmitted by the Clerk of this Court to the Clerk of the Circuit Court of Appeals for the Ninth Circuit and printed by said clerk in the case of the appeal entitled: 'J. R. Mason v. Paradise Irrigation District No. 9925, in the United States Circuit Court of Appeals for the Ninth District.'" Herein when we refer to the record of case No. 9925 we will quote it as (Tr. P. No. 9925). Whenever herein we refer to the new transcript we will refer to it merely as (Tr. P.).

Petitioner J. R. Mason filed an answer to the petition of the District for a composition in which he raised the following points (Tr. P. 18-25—No. 9925): (1) Alleging the purpose of the issuing of the bonds. (2) That he was the owner of bonds of the face value of $29,000.00 bearing interest coupons commencing July 1, 1936. (3) Denying that petitioner was entitled to have credited against his bonds certain voluntary payments of interest made by the District. (4) Denying that petitioner was unable to collect sufficient taxes or was insolvent. (5) Denying that creditors owning

not less than 92% in amount of the bonds and other evidences of debt affected by the plan had accepted the plan in writing, and particularly alleging that the Reconstruction Finance Corporation owns bonds aggregating $447,000.00. (6) Denying the list of creditors of petitioner set forth in Exhibit C is accurate or correct. (7) Denying that claims of creditors of petitioner are of a single class. (8) Alleging that the plan of readjustment is not fair, equitable, nor for the best interests of the creditors and that it was not made in good faith. (9) Alleging the plan is unfair because other bond holders having bonds in the same geographical area are not required to scale down their debts and because mortgage holders and deed of trust holders are not required to scale down their debts, such mortgage holders and deed of trust holders hold mortgages upon land within the geographical area of the petitioner. (10) That the Court is without jurisdiction to entertain the petition brought under Public Act No. 302, which he alleges is unconstitutional; claiming unconstitutionality in that Public Act No. 302 is in violation of Section 8, Article 1 of the Constitution; also that under said act private property may be taken for public use without just compensation contrary to Amendment No. 5 of the Constitution of the United States; that no power has been delegated to Congress to pass legislation such as said act; that such act was passed in violation of the reserved rights of states as guaranteed by Article 10 of the Federal Constitution, and said act is in violation of the rights of citizens and particularly these respondents, guaranteed and reserved to them by

Amendment X to the Constitution; said act attempts to subject state governmental agencies to the jurisdiction of the Federal Courts contrary to the plan and scheme of government, as set out in the Constitution of the United States.

Upon the issues raised by the petition and answer the matter went to trial before the District Court on March 16, 1939, and upon conclusion of the trial the Court entered its Findings of Fact and Conclusions of Law (Tr. 26-53, No. 9925), finding as follows: (1) That the District was founded for the purpose of constructing, improving, maintaining and operating projects devoted chiefly to the improvement of land for agricultural purposes; (2) that the Court had jurisdiction; (3) that there was due publication of notice to bondholders; (4) that the filing of the petition was duly authorized by proper resolution; (5) that petitioner was insolvent and unable to meet its debts as they matured; (6) that the District by resolution duly passed, adopted a plan of composition as set forth in the petition; (7) that said plan of composition as proposed, was equitable and for the best interest of the creditors of the District and did not discriminate unfairly in favor of or against any creditor or creditors or class of creditors and that petitioner had complied with the provisions of Public Act No. 302; (8) that prior to the filing of the petition, the Reconstruction Finance Corporation, an agency of the United States, pursuant to contract with petitioner, purchased at the composition rate and became the owner of and ever since has owned, held

and controlled and now owns, holds and controls over 92% in the amount of the outstanding bonds and other outstanding indebtedness of the petitioner affected by the plan of composition; (9) that all of the indebtedness of petitioner affected is payable without preference and out of funds derived from the same source and all the creditors of petitioner constitute but one class; (10) that all the allegations and averments contained in the petition for confirmation of the plan of composition were true and that all denials of said petitioner were untrue; that on the 8th day of December 1936 the District paid to J. R. Mason upon his non-assenting bonds, interest in the sum of $1077.66 and upon January 5, 1937, interest upon said bonds in the sum of $1958.29, making a total of $3055.95. (11) That the dismissal of the original petition of the District, which order of dismissal was entered October 28, 1936, was not *res adjudicata* as to this proceeding.

In pursuance of the Findings of Fact and Conclusions of Law, the District Court upon the 3rd day of February 1941, entered its interlocutory decree (Tr. 44-54, No. 9925) and an appeal was taken therefrom by J. R. Mason (Tr. P. 54, No. 9925). Upon May 14, 1942, the United States Circuit Court remanded said cause to the District Court to make specific findings bearing on the question of the maximum amount that the District was reasonably able to pay its bondholders in the circumstances, with or without the taking of additional evidence as the District Court in its discretion should determine, and to further clarify

findings upon the question whether the plan of composition provides for deductions from the amount to be paid, for interest coupons which were voluntarily paid by the Irrigation District (Tr. P. 173-74, No. 9925).

The rehearing came on April 20, 1943, and additional evidence was taken; upon November 24, 1942, the District Court entered and filed its Findings of Fact and Conclusions of Law on the points as to which the cause was remanded (Tr. P. 185-200 No. 9925), and upon the same date caused to be entered and filed its "Amendment to Interlocutory Decree" (Tr. 200-201 No. 9925), wherein the Court approved the original interlocutory decree but ordered no deduction be made for the $3055.95 voluntarily paid by the District to Mason on interest.

Following the foregoing the transcript of the record was forwarded to the United States Circuit Court (Tr. 203-204 No. 9925).

The matter was eventually submitted to the United States Circuit Court of Appeals, which confirmed the interlocutory decree of the District Court as amended. From this decision the present petitioner, J. R. Mason, petitioned for a writ of certiorari to this Court, the Supreme Court of the United States, which petition was granted. Thereafter as stated hereinbefore, this Court in the action of Mason v. Paradise Irrigation District (supra) entered its decision on January 4, 1946, affirming and approving said decree. Thereupon the mandate of the United States Circuit

Court of Appeals was filed in the District Court. Thereupon the District Court upon the 24th day of September 1947, caused to be entered and filed its final decree in the above matter (Tr. P. 26-32).

It is from the final decree last mentioned, the petitioner herein J. R. Mason, appeals (Tr. 32-33). Upon April 27, 1948 the respondent District gave notice of motion to dismiss appeal (Tr. 45-47). Upon January 26, 1948, the petitioner herein, J. R. Mason, filed an opposition of notice to dismiss appeal (Tr. 52-62). Upon May 7, 1948, the Appellate Court ordered the motion of appellee to dismiss appeal and the opposition of motion to dismiss appeal be submitted, and on the same day caused to be entered its order "that said Motion to Dismiss be granted; that the appeal be dismissed, and that a decree be filed and entered accordingly." Upon May 7, 1948 the United States Appellate Court entered its "decree" dismissing the appeal (Tr. 65). It is as to this order of the United States Circuit Court dismissing the appeal that the petitioner seeks from this Court a writ of certiorari.

In petitioner's appeal from the final decree of the District Court his points on appeal are set forth in the record (P. 33-34) as follows: (1) The final decree is *ultra vires,* (2) the decree conflicts with California laws which control the obligations and duties of the debtor, (3) the decree contravenes the land laws of California controlling rents, issues and profits of land within its domain, (4) the decree impairs the vested property rights of bondholders in violation of the Fifth Amendment of the Constitution, (5) the decree

as applied to the still outstanding original bonds impairs a contract and trust obligation executed by the State of California and secured by Article I, Section 10, cl. 1 of U. S. Constitution, and Article I, Section 16, and Article 6, Section 13 of California Constitution, (6) the decree limiting acceptance of funds *in custodia legis* to 12 months is an error of law, (7) the injunctive provisions in the final decree as applied, are an error of law and a gift of public funds prohibited by Article IV, Section 31 of the California Constitution, (8) the decree, which provides full payment of the investment made by the RFC in the form of long term interest bearing bonds, but denies equal treatment to the lawful holder of valid binding and unpaid original 6% gold bond obligations, ordering him to take a compromise cash figure without interest, is discriminatory, and unfair, and is an error of law.

The petitioner has petitioned for a writ of certiorari, giving the following reasons why the writ should be granted:

1. That the District Court erred in permanently restraining suits to compel the assessment and collection of ad valorem land taxes required by applicable state law.

2. The District Court erred in ordering the fund *in custodia legis* to be paid to the bankrupt before all allowed claims upon that fund have been paid.

3. That the Court erred in not confining its final decree to the jurisdictional limits allowed by the United States Constitution.

4. The Court erred in failing to decide that the prior denial of discharge is *res adjudicata.*

5. The Circuit Court erred in granting the motion to dismiss the appeal.

ARGUMENT.

Each and every one of the foregoing points raised by the petitioner were determined adversely upon the appeal from the interlocutory decree; all of such matters were before the District Court, the Circuit Court, and the United States Supreme Court in the first proceedings; all were determined adversely to petitioner other than the fifth point raised, namely, that the Circuit Court erred in granting the motion to dismiss the appeal, which of course could not have been, as the order dismissing the appeal was not made until May 7, 1948.

As to petitioner's fourth point, "that the Court erred in failing to decide that the prior denial of discharge is *res adjudicata;*" this point was before the District Court on the original hearing held in March 1939, and the Court found in respect thereto as follows (Tr. P. 37-39 No. 9925):

> "That heretofore on the 21st day of December, 19 , petitioner herein filed in this court its petition for debt readjustment under and pursuant to the provisions of paragraphs 78 to 80 of the Bankruptcy Act added by Act May 24, 1934, 11 U.S.C.A., Sections 301 to 303. That by said proceeding, petitioner sought to confirm a plan of

readjustment of its outstanding bonded indebtedness, which is the same substantially as the plan submitted in the present proceeding. That on May 25, 1936, the Supreme Court of the United States decided the case of Ashton v. Cameron County Water Improvement District, 298 U.S. 513, 80 L. Ed. 1309, wherein said court held that said act of Congress approved May 24, 1934, Chapter 345, and designated as Sections 78, 79 and 80 of the Bankruptcy Act of the United States, was unconstitutional. That thereafter, pursuant to notice of memorandum to dismiss theretofore filed with this Court by certain objecting creditors, on the ground that the decision of the Supreme Court of the United States in said Ashton case aforesaid, rendered this court without jurisdiction in said proceeding, this court did on October 28, 1936, grant said motion of said objecting creditors to dismiss said proceeding. That no trial or judgment on the merits of said amended petition filed by petitioner, pursuant to said Act of Congress approved May 24, 1934, Chapter 345, and designated as Sections 78, 79 and 80 of the Bankruptcy Act of the United States was ever had.

"That this Court finds that said proceeding so dismissed was based upon a law holding null and void, and which conferred no jurisdiction upon the court, and that there was no trial or judgment on the merits in said proceeding. That this court finds that the proceeding now before this court, based upon an entirely different law and one which does confer jurisdiction upon this court, and that petitioner herein is not barred in this proceeding by res adjudicata, or otherwise."

The point that the Court erred in not confining its final decree to the jurisdictional limit allowed by the United States Constitution, has previously been decided in the Mason case (supra). As to the point the District Court erred in ordering the fund *in custodia legis* to be paid to the bankrupt before all allowed claims upon that fund had been paid was before this Court upon the appeal from the interlocutory decree; similarly the point that the District Court erred in permanently restraining suits to compel the assessment and collection of *ad valorem* land taxes required by state law, was before this Court upon previous appeal and decided in favor of respondent.

CONCLUSION.

All matters presented by this appeal or that could be presented, were determined in the case of Mason v. Paradise Irrigation District (supra); the points may be stated in different language but in fact they are the same. There is nothing further to be decided by this Court than was decided by it in the said Mason case. This litigation commenced in December 1937, and it is now August 1948, a period of over eleven years. It is time that the litigation be brought to a conclusion; the United States Circuit Court by dismissing the appeal determined that there are no new points raised by appellant.

The foregoing disposes of petitioner's "Reason Why the Writ Should Be Allowed." However, the petitioner in his "Questions Presented" asks if the time

limit of 12 months, after which period the money in *custodia legis* will be paid to the bankrupt, whether allowed claims have been paid or not, conflicts with 11 U.S.C.A. 106, sub. (b), and Judicial Code Secs. 851, 852, Title 28. The interlocutory decree which was affirmed by this Court in the Mason case above referred to provided among other things that the petitioner, J. R. Mason, be required to deposit any and all of his bonds with the disbursing agent within a thirty day period thereinafter provided, or thereafter with the clerk of this Court, for payment in accordance with the decree or be forever barred from claiming or asserting as against petitioner or any individually owned property located within petitioner's district or the owners thereof, any claims or liens arising against said bonds * * * The interlocutory decree gave thirty days for the presentation of bonds of the petitioner; the final decree gives twelve months. The interlocutory decree was affirmed by the United States Circuit Court and its decision was affirmed by this Court in the said Mason decision. The final decree grants the petitioner twelve months in which to present his bonds; this is certainly an extension over the thirty day period provided in the interlocutory decree. In the opinion of the writer the twelve months does not commence to run until this appeal is finally settled, and petitioner will have twelve months after final decision upon the appeal in which to present his bonds and obtain his money, a process which could be fully completed with ease in one day. Certainly some time limit must be placed. It is of no moment to the District how long Mason be granted

to present his bonds, either one year, five years or ten years, but it is of moment to the Court to have a time limit of litigation and the twelve month period fixed in the final decree is a reasonable exercise of the Court's discretion.

In the matter see:

Mason v. Paradise Irrigation District, 306 U.S. 536, 66 S. Ct. 290;

Lorber v. Vista Irrigation District, 127 Fed. (2d) 628, 143 Fed. (2d) 282;

West Coast Life Ins. Co. v. Merced Irrigation District, 114 Fed. (2d) 654.

It is submitted that the petition should be denied.

Dated, Chico, California,
August 23, 1948.

Respectfully submitted,
P. M. BARCELOUX,
Attorney for Petitioner.

H. S. CLEWETT,
PETERS AND PETERS,
Of Counsel.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1948

No. 177

J. R. MASON,
Petitioner,
vs.
PARADISE IRRIGATION DISTRICT,
Respondent.

PETITION FOR A REHEARING.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Comes now J. R. Mason, respectfully requesting a rehearing in the above entitled cause, upon the grounds presented in the Petition for a Writ of Certiorari, Brief and Reply Brief and for the following reasons in support of those constitutional grounds.

Although it is as owner and holder of valid, binding and unpaid statutory trust claims that petitioner,

who is not a member of the bar, is afforded a standing in this Court, his interest and concern as a citizen of this Constitutional Republic, and student of fundamental economics, sociological and political principles far outweighs the pecuniary gain or loss he will experience by this proceeding.

The crucial constitutional points presented in the Petition, at pages 7, 8 and 9, and the failure by respondent to deny that the final decree as applied by the Court below impairs vested property rights secured by both the Constitutions of the United States and of California, plus the failure of respondent to deny or comment upon the points listed in petitioner's reply brief at pages 2, 3 and 4, are an integral reason for presenting this rehearing petition.

The final decree, as applied by the Court below not only allows the State of California to impair its statutory obligation owned by petitioner, but it also has the force and effect, as applied of "interfering" with the exercise of the sovereign power of the State of California to "rest taxation upon the value of land, irrespective of improvements", and thus contravenes a very long line of decisions by this Court both before and since the *U. S. v. Bekins* case, 304 US 27, uniformly affirming the fundamental principle that the sovereign power of a state, and its political subdivisions to borrow money, when exercised, is a power which may not be interfered with by the United States.

In *McCulloch v. Maryland Bank,* 4 Wheat. 316, 436-437, it was said:

"If we measure the power of taxation residing in a state by the extent of sovereignty which the people of a single state possess, and can confer on its government, we have an intelligible standard applicable to every case to which the power may be applied. * * * We are not driven to the perplexing inquiry, so unfit for the judicial department, what degree may amount to the abuse of the power."

It can scarcely be suggested that this Court's omission in the *Bekins* case, supra, to reverse or in any respect modify the historic doctrine of reciprocal immunity, constitutes an abandonment of the countless decisions adhering steadfastly to that principle, as follows:

"* * * as to the power to borrow money neither the United States on the one hand, nor the States on the other, can interfere with that power as possessed by each and an essential element of the sovereignty of each."

Pollock v. F.L.&T. Co., 157 US 429.

In *Cheathem v. Norvekl*, 92 US 561, it was said:

"All governments, in all times, have found it necessary to adopt stringent measures for the collection of taxes, and to be rigid in the enforcement of them. * * * In this country, this system for each State or for the Federal government provides safeguards of its own against mistakes, injustice or oppression, in the administration of its revenue laws. That system is intended to be complete. * * * If there existed in the Courts, State or National, any general power of impeding or controlling the collection of taxes, or relieving

> the hardship incident to taxation, the very existence of government might be placed in the hands of a hostile judiciary."

It has never been held by this Court that a State can constitutionally escape the fulfillment of its duty to assess and collect the taxes, rents, issues and profits of land within the domain of the State, as promised by applicable statutes securing money borrowed by the State, or a political subdivision thereof.

In *Von Hoffman v. Quincy,* 4 Wall. 535, this Court said:

> "* * * the legislature could not forbid the levy of assessments to pay the bonds or reduce their amount."

In *Murray v. Charleston,* 96 US 432, it was said:

> "But until the payment of the debt or interest has been made, as stipulated, we think no act of State sovereignty can work an exoneration from what has been promised to the creditor; namely payment to him, without a violation of the Constitution."

The bonds at bar are statutory tax-anticipation trust obligations, and this Court has held that taxes are not debts. *Mo. v. Ross,* 299 US 72.

The nature and source of any claim "is an important factor to be considered in the determination of the debtor's eligibility to a discharge under the Bankruptcy Act." *Smith v. White,* 166 F.2d 269 (CCA 9).

In *Buckout v. N. Y.*, 68 NE 659, 661, it was said:

"Taxation can not create debt until there is a tax fixed in amount and perfected in all respects."

In *Miller v. City of Greenville,* 138 F.2d 712, it was said:

"It is not federal court's function to interfere with assessment and levy of State property taxes."

In *Brick v. McColgan,* 39 F. Supp. 358, 364, it was said:

"An injunction restraining the collection of taxes in a state court—a stay not being authorized by any law relating to bankruptcy, is prohibited by § 265 Jud. Code, 28 U.S.C.A. § 379."

In *Wall v. Chicago Park Dist.,* 37 NE(2d)752, it was said:

"A municipal obligation created by a special assessment upon property benefited by proposed improvement would not be a 'debt' within contemplation of Constitutional limitation upon municipal debt."

In *Heine v. Lev. Comm.,* 19 Wall. 655, it was said:

"It is not only not one of the inherent powers of the Court to levy and collect taxes, but it is an invasion by the judiciary of the federal government of the legislative functions of the state government."

In *Rancho Santa Anita v. Arcadia,* 20 Cal.(2d)475 it was said:

"In absence of constitutional or statutory limitations, amount of revenue necessary for needs of a municipality is within sole discretion of legislative authorities and this discretion is not subject to judicial interference."

In *Harvey v. Radcliffe,* 41 Atl.(2d)455 it was said:

"A contract made by the U. S. Government in the exercise of its power to borrow money is independent of the will of any State * * *".

In *Skaggs v. Comm.,* 122 F.(2d)721 it was said:

"It is universally held that real or immovable property is exclusively subject to the law of the country or state in which it is situated, and *no interference* with it by the law of any *other* sovereignty is permitted." (Italics added.)

Certiorari was denied by this Court in 315 US 811.

In *Petition of S.R.A.,* 18 NW(2d)442, Affirmed in 327 US 558, it was said:

"The private holder of land never enjoys tax immunity as a right but only as an incidental windfall when, and only as long as, the imposition of a State tax in some way impairs, or interferes with the exercise of a federal function."

In *Wulff Hansen v. Silvers,* 21 Cal.(2d)253, it was said:

"The law places such duty on the tax collector and the city cannot hide behind the failure of a city officer to perform a duty imposed upon him by law."

In *Lubezny v. Ball,* 59 NE(2d)645, it was said:

> "A tax anticipation warrant issued against school district taxes is simply an assignment of tax money which directs the treasurer to pay the holder, and does not present an analogous situation as respects special assessment bonds, since no debt is created by an anticipation warrant, and, after delivery there is no future obligation upon it, either absolute or contingent, to pay out anything except the levy anticipated, when collected."

Petitioner's claim, in this case, has likewise been construed and applied by the Supreme Court of California as analogous with the tax anticipation warrants, supra. The California decisions are:

Provident v. Zumwalt, 12 Cal.(2d)365;
El Camino v. El Camino, 12 Cal.(2d)378;
Moody v. Provident, 12 Cal.(2d)389.

A few other decisions establishing the nature and source of claims arising under the same law as the bonds at bar, are:

Fallbrook I.D. v. Bradley, 176 US 112;
Tregea v. Modesto I.D., 164 US 179;
Tulare I.D. v. Shepard, 185 US 1;
Stimson v. Alessandro I.D., 135 Cal. 389;
Baxter v. Vineland I.D., 136 Cal. 185;
Ham v. Grapeland I.D., 172 Cal. 611;
Boskowitz v. Thompson, 144 Cal. 724;
Dougherty v. Bettencourt, 213 Cal. 514;
Herring v. Modesto I.D., 95 Fed. 705;

Wores v. Imperial I.D., 193 Cal. 609;
Shouse v. Quinley, 3 Cal. (2d) 357;
Bates v. McHenry, 123 Cal. App. 81;
Selby v. Oakdale I.D., 140 C. A. 171;
Meyerfeld v. S. San Joaquin I.D., 3 Cal. (2d) 409.

The controlling decisions, as to both the substantive and procedural rights of petitioner hold, without any exception that it is the duty of a federal Court to ascertain and apply the State law where, as here, State law controls both the powers and duties of respondent, and the vested rights of petitioner who is guaranteed the right to have enforced the assessment and collection of land-value taxes, ground rent, and other sources of revenue as promised when the bond contract was made, in 1917 and 1920. (R. 25, No. 306.) This right is stated in 44 Corp. Jur. p. 1237, 1238.

The cases holding that State law controls the duties and rights of the State and persons holding statutory claims upon land, whenever involved in a Federal Bankruptcy proceeding, are:

Ashton v. Cameron County, 298 US 513;
Brush v. Comm., 300 US 352, 366;
U. S. v. Bekins, 304 US 27;
Arkansas Corp. v. Thompson, 313 US 132;
Bankers Tr. Co. v. N. Y., 323 US 714;
Meredith v. Winter Haven, 320 US 228;
Guaranty Tr. Co. v. York, 326 US 99;
Vanston Bdhrs. Comm. v. Green, 329 US 156;
Gardner v. N. J., 329 US 565.

In the *Bekins* case, supra, this Court said:

> "The reservation to the States by the 10th amendment protected and did not destroy, their right to make contracts and give consents *where that action would not contravene the provisions of the Federal Constitution.*" (Emphasis supplied.)

It is not contended, or even suggested by respondent that there was any provision in any California law when the bond contract was made allowing it to submit its statutory duties to federal regulation, control or veto, directly or indirectly. In 26 Cal. Jur., p. 403 it is said, "An Irrigation District has only such powers as are given it by law, and must exercise those powers conferred, in the manner prescribed." This limitation was construed and applied where other attempts were made which, if allowed, would have contravened Constitutional provisions.

Selby v. Oakdale I.D., supra;
Shouse v. Quinley, supra;
Meyerfeld v. South San Joaquin I.D., supra;
Provident v. Zumwalt, supra.

The bonds owned by petitioner were issued in 1917 and 1920, and it was not until 1939 that California enacted the statute which pretended to give consent. But, this Ch. 72, Stats. 1939 conferred on the United States no authority to modify, or enjoin the statutory rights of the holders of pre-existing contracts. To have attempted such consent would have contravened the following Constitutional provisions:

> "The power of taxation shall never be surrendered or suspended by any grant or contract to

which the State shall be a party." (Art. XIII, sec. 6.)

"No injunction * * * or other legal or equitable process shall ever issue in any suit, action or proceeding against this State, or any officer thereof, to prevent or enjoin the collection of any tax levied under the provisions of this article; * * *". (Art. XIII, Sec. 15.)

No provisions in the laws governing the duties and powers of respondent, or the rights of petitioner (Stats. 1897, p. 254 as amended) are amended or suspended by this 1939 statute, and repeals by implication are never favored. *U. S. v. Borden Co.,* 308 US 188.

In *La. v. New Orleans,* 215 US 170 it was said:

"The Legislature of a State can not take away rights created by former legislation for the security of debts owing by a municipality of the State or postpone indefinitely the payment of lawful claims until such time as the municipality is ready to pay them."

In *State v. Village of Brooklyn,* 49 NE (2d) 684 it was said:

"Legislature can not impair or modify contractual obligation of a village under its bonds without the consent of bondholders, non-consenting bondholders' rights, after enactment of Gallagher Act remained as they were under bonds, as originally issued."

In 43 Corp. Jur., p. 211 it is said:

> "As the State may not, by any law or contract, surrender or restrict any portion of the sovereignty which it holds in sacred trust for the public weal, so a municipal corporation, as a governmental agency, can not surrender or contract away its governmental functions and powers, nor such functions as are regarded as mandatory, and any attempt to barter or surrender them is invalid."

Thus, a State can not constitutionally abdicate its duty as trustee of restricted land in which all persons have an equal and unalienable right and interest, such as the land within the Paradise Irrigation District, any more than the State can surrender its police power to veto by another sovereign. When such interference by another sovereign involves the rights of persons who have made valid loans to the State or to its local governments, this Court has steadfastly disallowed such attempts, in the cases above cited.

In *Arkansas Corp. v. Thompson,* 312 US 673 it was said:

> "But there is nothing in the history of bankruptcy or reorganization legislation to support the theory that Congress intended to set the Federal Court up as super-assessment agencies over State taxes."

That the power of a State to assess and enforce the collection of ad-valorem land taxes is a *paramount sovereign power* was held by the Pennsylvania Supreme Court in *Day v. Ostergard,* 21 A. (2d) 586, 588.

That the sovereign power of the States to tax land, when exercised would remain "independent and uncontrollable" in "the most absolute and unqualified sense" after the adoption of the U. S. Constitution was expressly agreed to by Hamilton, in Federalist Essays, Nos. XII, XXX to XXXVI. In *Coyle v. Smith,* 221 US 559, 572 is an interpretation of the futility of an attempt by a State to add to the powers of the Congress.

In *International Shoe Co. v. Pinkus,* 278 US 261 it was said:

> "The National purpose to establish uniformity necessarily excludes State regulation * * * States may not pass or enforce laws to interfere with or complement the Bankruptcy Act or to provide additional or auxiliary regulations."

A contrary view from that laid down in the *Pinkus* case, supra, is expressed by Mr. Justice Jackson, in his book, "The Struggle for Judicial Supremacy", at page 168, as follows:

> "In the Municipal Bankruptcy (11 USCA 401-403) case, the states went further and legislated to enable their subdivisions to take advantage of the federal law; the states could withdraw their authorization at any time *and so make the federal law inoperative."* (Italics added.)

That the powers allowed the United States can not be added to or diminished by the consent or submission of a State, is settled.

Kohl v. U. S., 91 US 371;
U. S. v. Butler, 297 US 1;

Carter v. Carter Coal Co., 298 US 238;
Ashton v. Cameron County, 298 US 513;
U. S. v. Carmack, 67 S. Ct. 252.

In *Ableman v. Booth*, 21 How. 506, 516, it was said:

> "* * * the powers of the General government, and of the State, although both exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties, acting separately and independently of each other within their respective spheres."

The unauthorized action of the Court below, consists in the entry of an order enjoining proceedings in the California Court to compel respondent to perform a "plain official duty," which injunction has the force and effect of protecting responsible tax officials who have ever since 1935 failed, neglected and refused to perform, as required by the applicable State law the governmental powers and duties confided to them. Under the provisions of 11 USCA 403 (c) (i), the base of this action, any and all right to "interfere" with any governmental powers is expressly denied the Bankruptcy Court.

This inhibition against any such orders which "interfere" with the political or governmental affairs of petitioners seeking to invoke Chap. IX of the Bankrutcy Act, is discussed in the following cases:

Spellings v. Dewey, 122 F.(2d) 652 (CCA 8);
Green v. City of Stuart, 135 F.(2d) 33 (CCA 5);
Leco Prop. Co. v. Crummer & Co., 128 F. (2d) 110 (CCA.5);

Mission S. D. v. Texas, 116 F.(2d) 17, (CCA5);
Faitoute v. Asbury Park, 316 US 502.

Respondent has cited no decision by this Court interpreting the inhibitions in 11 USCA 403 (c) (i), or even suggesting that the provisions in Sec. 64a, 67b of Bankruptcy Act, or the other federal statutes shown in the petition at p. 22, are inapplicable when proceedings are brought under Chap. IX.

In 11 USCA § 35, it is provided "a. A discharge in bankruptcy shall release a bankrupt from all of his provable debts, * * * except such as (1) are due as a tax levied by the United States, or a state, county, *district,* or municipality * * *".

The situation here, is that the alleged bankrupt is never a taxpayer, but always a tax collector, the alter ego of the State.

Anderson Cottonwood I.D. v. Klukkert, 13 Cal. (2d) 191;
Cowan v. Fallbrook, 131 F.(2d) 513 (CCA 3). (Cert. denied 320 US 735.)

Therefore the injunctive provision in the final decree complained of must presuppose that the decree deals with parties and pecuniary interests in respect of which the Court has been delegated unrestricted jurisdiction.

Chap. IX also expressly denies the Bankruptcy Court any authority to issue any order or decree, unless it is allowed by the bankrupt. 11 USCA 403 (e). It is submitted that the Final Decree below, as applied, affects adversely the claim of petitioner,

which is in no respect a contract between persons, but a tax anticipation trust obligation, bottomed upon the Constitution and laws of California which are still in full force and effect. Because of its nature the claim is protected from federal impairment by the 5th and 10th amendments to the U. S. Constitution, and the final decree therefore deals with State affairs which under no circumstances can be vetoed by any permanent injunction which any Federal Court may lawfully enter.

In *Anderson-Cottonwood v. Zinzer,* 51 Cal. App. (2) 589 (1942) the California Court construes and applies the delegated taxing power of the State in a long and well reasoned opinion, in which the law securing the claim of petitioner, and the law governing and controlling the devolution of privately held title deeds to taxable land within such districts is extensively explored. An appeal taken to the California Supreme Court was denied June 25, 1942.

In Canada the 1929 slump also involved local governments in fiscal difficulties, including Irrigation Districts. In *Board of Trustees, Lethbridge Northern Irr. Dist. v. I. O. F.,* 2 D.L.R. 273 (1940) the Court held the statute involved *ultra vires.* In *Ladore v. Bennett,* 3 D.L.R. 1, A.C. 468 (1939) the Court said:

> "The Province (Ontario) has *exclusive legislative power* in relation to (s.92 (8)) Municipal Institutions in the Province. Sovereign within its constitutional powers the Province is charged with the local government of its inhabitants by means of municipal institutions." (Italics added.)

In *Reference re Debt Adjustment Act* 1937, 1 D.L.R. 1, (1942) the Supreme Court of Canada held *ultra vires* certain laws enacted by the Province of Alberta. In *Plourde v. Roy,* 1 D.L.R. 426 (1942) the Alberta Supreme Court disallowed a law involving payment of land debts, on the ground that it was *ultra vires.*

In *Hagan v. Recl. District* 108, 111 US 701 it was said:

> "The construction of the statutes and Constitution of a State as to political or taxing instrumentalities of such State are emphatically matters of State law on which the decisions of the State Courts are conclusive, and must be followed by the Federal Courts."

In Civil Code, Div. 4, part 1, title 3, ch. 3, § 3423, it is said:

> "When injunctive relief may not be granted—(7) To prevent a legislative act by a municipal corporation." (Stats. 1925, p. 829.)

In *U. S. v. Aho,* 68 F. Supp. 358 and *U. S. v. Florea,* 68 F. Supp. 367, are learned interpretations of the history, force and effect of such land taxes and assessments as secure the claim of petitioner, going far back into English history. Even land acquired by the King of England was not immune from this species of assessment.

It was pointed out in the instant petition, and not denied by respondent, that any Federal tax imposed on interest received by petitioner from the bonds at bar would be repugnant to the Constitution. Two

opinions by the Attorney General of the U. S. adopt this principle, as follows, *30 Atty. Gen. Ops. 252* (1914); *38 Atty. Gen. Ops. 563* (1937). These opinions were discussed in the dissenting opinion by Mr. Justice Frank, in *Comm. v. Shamberg,* 144 F.(2d) 998 (CCA 2) (1944). Despite the fact that neither New York nor New Jersey had delegated any authority to the Port of N. Y. Authority to exercise the State's sovereign power to tax land values, the immunity of such obligations from Federal taxation was allowed, and this Court denied Petition for a Writ of Certiorari.

Therefore, if the final decree as applied by the Court below is allowed to stand, and the Federal Legislature, by simple statute is allowed to deprive petitioner of all the interest lawfully payable to him, plus taking about 50% of bond principal, although a Federal tax which would deprive him of only a portion of the same interest is not lawful, has not a higher dignity and importance been given the Bankruptcy clause, than is being given the Federal tax clause? In view of the size of the Federal debt, and the relative smallness of the debts of the States and their local tax bodies, such inconsistency in respect of these two federal powers can not make for economic or political equilibrium.

In Senate Document No. 69, 78 Cong. 1st Sess., "Federal, State and Local Fiscal-Relations" is a 576 page report transmitted in response to S. Res. 160. The comments on "Centralization v. Decentralization" at p. 176, and "Jurisdiction to tax as defined

by the Judiciary", at p. 235 in this Report, have a direct relevancy to the bottom question here.

In *Monaco v. Mississippi,* 292 US 313 this Court said:

> "Behind the words of the Constitutional provisions are postulates which limit and control. There is the essential postulate that the controversies, as contemplated, shall be found to be of a justiciable character."

In *Providence Bank v. Billings,* 4 Pet. 514 it was said:

> "Whatever may be the rule of expediency, the constitutionality of a measure depends not on the degree of its exercise, but on its principle."

The following are passages from the book *"Social Problems"* by Henry George, written in 1883, which discuss briefly the economic, sociological and political effects of direct ad-valorem land taxes, and the exemption of improvements from the tax, as is provided in the California statute forming the base of the duties and rights of the parties in this proceeding. (Stat. 1917, p. 764; Stat. 1943, Ch. 368, secs. 25500, 25501.)

> "Do what we may, we can accomplish nothing real and lasting until we secure to all the first of those equal and unalienable rights with which, as our Declaration of Independence has it, man is endowed by his Creator—*the equal and unalienable right to the use and benefit of natural opportunities.*
>
> There are people who are always trying to find some mean between right and wrong—people who,

if they were to see a man about to be unjustly beheaded, might insist that the proper thing to do would be to chop off his feet. These are the people who, beginning to recognize the importance of the land question, propose the limitation of estates.

Nothing whatever can be accomplished by such timid, illogical measures. If we would cure social disease we must go to the root.

There is no use in talking about restricting the amount of land any one man may hold. That, even if it were practicable, were idle, and would not meet the difficulty. The ownership of an acre in a city may give more command of the labor of others than the ownership of a hundred thousand acres in a sparsely settled district, and it is utterly impossible by any legal device to prevent the concentration of land so long as the general causes which irresistibly tend to the concentration of land remain untouched.

* * * * * * *

If there seems anything strange in the idea that all men have equal and unalienable rights to the use of the earth, it is merely that habit can blind us to the most obvious truths. Slavery, polygamy, cannibalism, the flattening of children's heads, or the squeezing of their feet, seem perfectly natural to those brought up where such institutions or customs exist. But, as a matter of fact, nothing is more repugnant to the natural perceptions of men than that land should be treated as subject to individual ownership, like things produced by labor; nor has it ever obtained save as the result of a long course of usurpation, tryanny and fraud. This idea reached development among

the Romans, whom it corrupted and destroyed. It took many generations for it to make its way among our ancestors; and it did not, in fact, reach full recognition until two centuries ago, when, in the time of Charles II, the feudal dues were shaken off by the landholders' parliament. We accepted many other things, in which we have servilely followed European custom. Land being plenty and population sparse, we did not realize what it would mean when in two or three cities we should have the population of the thirteen colonies. But it is time that we should begin to think of it now, when we see ourselves confronted, in spite of our free political institutions, with all the problems that menace Europe, we have a 'working-class,' a 'criminal class' and a 'pauper class;' when there are already thousands of so-called *free* citizens of the Republic who cannot by the hardest toil make a living for their families, and when we are, on the other hand, developing such monstrous fortunes as the world has not seen since great estates were eating out the heart of Rome.

WHAT MORE PREPOSTEROUS

What more preposterous than the treatment of land as individual property? In every essential land differs from those things which being the product of human labor are rightfully property. It is the creation of God; they are produced by man. It is fixed in quantity; they may be increased illimitably. It exists, though generations come and go; they in a little while decay and pass again into the elements. What more preposterous than that one tenant for a day of this rolling sphere should collect land rent for it from

his co-tenants, or sell to them for a price what was here ages before him and will be here ages after him? What more preposterous than that we should be working for a lot of landlords who got the authority to live on our labor from some English king, dead and gone these centuries? What more preposterous than that we, the present population of the United States, should presume to grant to our own people or to foreign capitalists the right to strip of their earnings American citizens of the next generation? What more utterly preposterous than these titles to land? *Although the whole people of the earth in one generation were to unite, they could no more sell title to land against the next generation than they could sell that generation.* It is a self-evident truth, as Thomas Jefferson said, that the earth belongs in usufruct to the living.

Nor can any defense of private property in land be made on the ground of expediency. On the contrary, look where you will, and it is evident that the private ownership of land keeps land out of use, that the speculation it engenders crowds population where it ought to be more diffused, diffuses it where it ought to be closer together; compels those who wish to improve to pay away a large part of their capital, or mortgage their labor for years, before they are permitted to improve; prevents men from going to work for themselves who would gladly do so, crowding them into deadly competition with each other for the wages of employers; and enormously restricts the production of wealth while causing the grossest inequality in its distribution.

No assumption can be more gratuitous than that constantly made that absolute ownership of land is necessary to the improvement and proper use of land. What is necessary to the best use of land is the security of improvements—the assurance that the labor and capital expended upon it shall enjoy their reward. This is a very different thing from the absolute ownership of land. Some of the finest buildings in New York are erected upon leased ground. Nearly the whole of London and other English cities, and great parts of Philadelphia and Baltimore, are so built. All sorts of mines are opened and operated on leases. In California and Nevada the most costly mining operations, involving the expenditure of immense amounts of capital, were undertaken upon no better security than the mining regulations, which gave no ownership of the land, but only guaranteed possession as long as the mines were worked.

If shafts can be sunk and tunnels can be run, and the most costly machinery can be put up on public land on mere security of possession, why could not improvements of all kinds be made on that security? If individuals will use and improve land belonging to other individuals, why would they not use and improve land belonging to the whole people? What is to prevent land owned by Trinity Church, by the Sailors' Snug Harbor, by the Astors or Rhinelanders, or any other corporate or individual owners, from being as well improved and used as now, if the *ground-rents,* instead of going to corporations or individuals, went into the public treasury?

In point of fact, if land were treated as the common property of the whole people, it would

be far more readily improved than now, for then the improver would get the whole benefit of his improvements. Under the present system, the price that must be paid for land operates as a powerful deterrent to improvement. And when the improver has secured land either by purchase or by lease, he is taxed upon his improvements, and heavily taxed in various ways upon all that he uses. Were land treated as the property of the whole people, the ground-rents would accrue to the community.

To secure to all citizens their equal right to the land on which they live, does not mean, as some of the ignorant seem to suppose, that every one must be given a farm, and city land be cut up into little pieces. It would be impossible to secure the equal rights of all in that way, even if such division were not in itself impossible. In a small and primitive community of simple industries and habits, such as that Moses legislated for, substantial equality may be secured by alloting to each family an equal share of the land and making it unalienable. But among a highly civilized and rapidly growing population, with changing centers, with great cities and minute division of industry, and a complex system of production and exchange, such rude devices become ineffective and impossible.

Must we therefore consent to inequality—must we therefore consent that some shall monopolize what is the common heritage of all? If two men find a diamond, they do not march to a lapidary to have it cut in two. If three sons inherit a ship, they do not proceed to saw her into three pieces; nor yet do they agree that if this cannot be done

equal division is impossible. And so it is not necessary, in order to secure equal rights to land, to make an equal division of land. All that it is necessary to do is to *collect the ground-rents for the comman benefit.*

Nor, to take *ground-rents* for the common benefit, is it necessary that the state should actually take possession of the land and rent it out from year to year, or from term to term, as some ignorant people suppose. It can be done in a much more simple and easy manner by means of the existing machinery of taxation. All it is necessary to do is to rest taxation upon the value of land irrespective of improvements, and take the *ground-rent* for the public benefit.

* * * * * * *

In a book such as this, intended for the casual reader, who lacks inclination to follow the close reasoning necessary to show the full relation of this seemingly simple reform to economic laws, I cannot exhibit its full force, but I may point to some of the more obvious of its effects.

* * * * * * *

To appropriate ground-rent* to public uses by means of taxation would enormously increase the production of wealth by throwing open natural opportunities. It would make the holding of land unprofitable to any but the user. There would be no temptation to any one to hold land in expectation of future increase in its value when that increase was certain to be demanded in taxes. No

*I use the term ground-rent because the proper economic term, rent, might not be understood by those who are in the habit of using it in its common sense, which applies to the income from buildings and improvements, as well as land.

one could afford to hold valuable land idle when the taxes upon it would be as heavy as they would be were it put to the fullest use.

The enormous increase in production which would result from thus throwing open the natural means and opportunities of production would enormously augment the annual fund from which all incomes are drawn. It would at the same time make the distribution of wealth much more equal. That great part of this fund which is now taken by the holders of land, not as a return for anything by which they add to production, but because they have appropriated as their own the natural means and opportunities of production, and which as material progress goes on, and the value of land rises, is constantly becoming larger and larger, would be virtually divided among all, by being utilized for common purposes. The removal of restrictions upon labor, and the opening of natural opportunities to labor, would make labor free to employ itself. Labor, the producer of all wealth, could never become 'a drug in the market' while desire for any form of wealth was unsatisfied. With the natural opportunities of employment thrown open to all, the spectacle of willing men seeking vainly for employment could not be witnessed; there could be no surplus of unemployed labor to beget that cutthroat competition of laborers for employment.

The equalization in the distribution of wealth that would thus result would effect immense economies and greatly add to productive power. The cost of the idleness, pauperism and crime that spring from poverty would be saved to the community; the increased mobility of labor, the

increased intelligence of the masses, that would result from this equalized distribution of wealth, the greater incentive to invention and to the use of improved processes that would result from the increase in wages, would enormously increase production.

* * * * * * *

'Land lies out of doors.' It cannot be hid or carried off. Its value can be ascertained with greater ease and exactness than the value of anything else, and taxes upon that value can be collected with absolute certainty and at the minimum of expense.

* * * * * * *

It is no mere fiscal reform that I propose; it is a conforming of the most important social adjustments to natural laws. To those who have never given thought to the matter, it may seem irreverently presumptuous to say that it is the evident intent of the Creator that land values should be the subject of taxation; that land rent should be utilized for the benefit of the entire community.

* * * * * * *

We may know that the natural or right way of raising the public revenues which are required by the needs of society is by the taxation of land values. The value of land is in its nature and relations adapted to purposes of taxation, just as the feet in their nature and relations are adapted to the purposes of walking. The value of land increases as the development of society goes on. Taxation upon land values does not lessen the individual incentive to production and accumulation, as do other methods of taxation; on the contrary, it leaves perfect freedom to productive

forces, and prevents restrictions upon production from arising. It does not foster monopolies, and cause unjust inequalities in the distribution of wealth, as do other taxes; on the contrary, it has the effect of breaking down monopoly and equalizing the distribution of wealth. It can be collected with great certainty and economy: it does not beget the evasion, corruption and dishonesty that flow from other taxes. In short, it conforms to every economic and moral requirement. What can be more in accordance with justice than that the value of land, which is not created by individual effort, but arises from the existence and growth of society, should be taken by society for social needs?

* * * * * * *

This is the law of [land] rent: As individuals come together in communities, and society grows, there arises, over and above the value which individuals can create for themselves, a value which is created by the community as a whole, and which, attaching to land, becomes tangible, definite and capable of computation and appropriation. As society grows, so grows this value, distinguished from what is contributed by individual exertion—all social advance necessarily contributes to the increase of this common value; to the growth of this common fund.

Here is a provision made by natural law for the increasing needs of social growth. Here is a fund belonging to society as a whole from which, without the degradation of alms, private or public, provision can be made for the weak, the helpless, the aged.

* * * * * * *

FARMERS

It is not true that such measures as I have suggested are opposed to the interests of the great body of farmers. On the contrary, these measures would be as clearly to their advantage as to the advantage of wageworkers. Those who are trying to persuade him that to put taxation upon the value of land would be to put all taxation upon him, have as little chance of success as the slaveholders had of persuading their Negroes that the Northern armies were bent on kidnaping and selling them in Cuba.

* * * * * * *

The farmer who cultivates his own farm with his own hands is a landholder, it is true, but he is in a greater degree a laborer, and in his ownership of stock, improvements, tools, etc., a capitalist. It is from his labor, aided by this capital, rather than from any advantage represented by the value of his land, that he derives his living. His main interest is that of a producer, not that of a landholder.

* * * * * * *

It requires no grasp of abstraction for the working farmer to see that to abolish taxation, save upon the value of land, would be really to his interest. Let the working farmer consider how the weight of indirect taxation falls upon him without his having power to shift it off upon any one else; how it adds to the price of nearly everything he has to buy, without adding to the price of what he has to sell; how it compels him to contribute to the support of government in far greater proportion to what he possesses than it

does those who are much richer, and he will see that by the substitution of direct for indirect taxation, he would be largely the gainer. Let him consider further, and he will see that he would be still more largely the gainer if direct taxation were confined to the value of land. A tax upon the naked value of land, irrespective of improvements, would be manifestly to the advantage of the holder of improved land, and especially of small holders.

* * * * * * *

All the tendencies of the time are to the extinction of the typical American farmer—the man who cultivates his own acres with his own hands. This movement has only recently begun, but it is going on, and must go on, under present conditions, with increasing rapidity.

* * * * * * *

This tendency means the extirpation of the typical American farmer, who with his own hands and the aid of his boys cultivates his own farm."

Herbert Spencer wrote in *Social Statics* (1851 Ed. Vol. IX) as follows:

"Meanwhile, we shall do well to recollect that there are others beside the landed class to be considered. In our tender regard for the vested interests of the few, let us not forget that the rights of the many are in abeyance, and must remain so, as long as the Earth is monopolized by individuals * * *

We find that if pushed to its ultimate consequences, a claim to the exclusive possession of the

soil involves a land owning despotism. And we find lastly, that the theory of co-heirship of all men to the soil is consistent with the highest civilization; and that, however difficult it may be to embody that theory in fact, equity sternly commands that it be done."

Thomas Jefferson supported this idea, saying:

"The Earth is given a common stock for man to labor and live on, if for the encouragement of industry we allow it to be appropriated, we must take care that other employment be provided to those excluded from the appropriation.

If we do not, the fundamental right to labor the earth returns to the unemployed. It is too soon yet in our country to say that every man who can not find employment, but who can find uncultivated land, shall be at liberty to cultivate it, paying a moderate rent. But it is not too soon to provide by every possible means that as few as possible shall be without a little portion of land. The small landholders are the most precious part of the State."

(*Thos. Jefferson, Writings,* Monticello Ed., Vol. 19, p. 18.)

In *"Landownership Survey on Federal Reclamation Projects"*, issued by the Department of the Interior (Government Printing Office, 1946), in Part Three, is "The historical background of Reclamation Law and Policy with respect to excess land limitation", pp. 61 to 98, quoting not only Thomas Jefferson, as above, but Horace Greeley, numerous Popes

and other religious leaders, and excerpts from the platforms of both of our political parties, going back as far as 1860. This very important volume also tells in Part IV, *"What some other countries are doing towards control of land monopoly."* The report on Denmark's transformation from a land of feudal serfs, to one where "94 percent of the 200,000 farmers in Denmark own the farms which they operate", is noteworthy (p. 98).

The late Honorable L. L. Dennett, Chairman of the Assembly Irrigation District Committee, 1915, wrote as follows in an article headed *"Irrigation District Work Makes Arid Land Flourish"*, in the San Francisco Call and Post, Jan. 15, 1916:

> "These (Irrigation) Districts were compelled to overcome an inconceivable amount of antagonism in placing their first securities and building their systems. Now that they are practically completed, so effective has been the demonstration of their capacity, that capital is more than willing to invest in their securities. Had this sympathetic attitude existed in the beginning, it would have saved the districts many hundred thousands of dollars and years of time, but possibly the *self reliance learned by the people through all their adversity is worth all that it cost* * * * As examples of judicious State control and influence in local self government the reports (issued by the District Securities Commission, created by Stat. 1913, p. 778) are worthy models of official carefulness, indicative of a new departure in State government. As the result of such (State) examination the validity and security of the bonds of these Districts are certified to by the State Controller,

so that in moral effect such bonds have a State guarantee."

The following passage by Dr. Johnson is offered:

"Let us consider, my Lords, that arbitrary power has seldom or never been introduced into any country at once. It must be introduced by slow degrees, and as it were, step by step, lest the people should see its approach. The barriers and fences of the people's liberty must be plucked one by one, and some plausible pretence must be found for removing or hoodwinking, one after another, those sentries who are posted by the Constitution of a free country, for warning the people of their danger. When these preparatory steps are once made, the people may then, indeed, with regret, see slavery and arbitrary power making long strides over their land; but it will be too late to think of preventing or avoiding the impending ruin." (*U. S. Law Jrnl.*, p. 284, May, 1939.)

Petitioner has filed many petitions in this Court, since his Counsel filed "Brief of Amici Curiae in opposition to Motion for Rehearing" after decision in the *Ashton v. Cameron County case,* No. 859, October term, 1935 (298 US 513). The basic principles and cases cited in that brief are the same as those presented and relied upon in all petitioner's other briefs, since the amended Chap. IX (11 USCA 401-403) created an opportunity for the filing of new petitions by the same political subdivisions, which were denied their Petition for a Rehearing, after the *Ashton* decision, supra.

Although all appeals from the Final Decrees entered under the amended Ch. IX have been denied by this Court, which petitioner greatly regrets, he does not regret the opportunity these petitions have afforded him to try and defend the equal and unalienable rights of all persons to acquire, use, occupy and hold land, as enunciated by this Court in *Shelley v. Kraemer,* 334 US 1, and recognized more recently by the California Supreme Court in *Perez v. Lippold,* 32 Adv. Cal. Reports, p. 757. (Oct. 1, 1948.) In that case the California Court disallowed Stats. 1850, ch. 140, p. 424, and in the learned concurring opinion by Mr. Justice Carter (pp. 777, 785) he reviews the earlier views on human rights and slavery announced by this Court, and concludes:

> "In my opinion, the statutes here involved violate the very premise on which this country and its Constitution were built, the very ideas embodied in our Declaration of Independence, the very issue over which the Revolutionary War, the Civil War, and the Second World War were fought, and the spirit in which the Constitution must be interpreted in order that the interpretations will appear as 'Reason in any part of the World besides.' "

In *Poindexter v. Greenhow,* 114 U.S. 269, this Court said:

> "Of what avail are written constitutions if their limitations and restraints upon power may be over-passed with impunity by the very agencies created and appointed to guard, defend and enforce them? * * * How else can these principles of individual liberty and right be maintained if,

when violated, the judicial tribunals are forbidden to visit penalties upon individual offenders, who are the instruments of wrong, whenever they interpose the shield of the State? The doctrine is not to be tolerated. The whole frame and scheme of the political institutions of this country, State and Federal, protest against it. It is the doctrine of absolutism, pure, simple and naked; and of communism, which is its twin; the double progeny of the same evil birth."

President Truman said:

"Local self government took upon itself in our early history the work of social advance, freed education, and open statutory agreements, which contributed so much to the building of the American character. This work should and must be furthered."

(*Bond Buyer,* NY, Dec. 7, 1946, p. 2.)

Respondent has offered no denial or comment on the following:

"The California Irrigation District Act is a land law, the full operation of which could never infringe the equal right of all persons to acquire, use and hold land, guaranteed by the 14th amendment, as recently construed by this Court in the *Shelley v. Kraemer* case. But, the decree below, if it stand, will only serve to make this non-discriminatory land law discriminatory * * *". (Brief, p. 37; Reply Brief, pp. 3, 4.)

The bottom question, raised in this petition in the form of an actual controversy, is whether the Federal Legislature may enact a valid statute authorizing its

Courts to enter such a permanent, coercive injunction as is written into the Final Decree by the Court below, which is in clear conflict with the fundamental law, as adhered to steadfastly by this Court in the cases cited herein.

In the *Ashton* case, supra, it was said:

> "Our special concern is with the existence of the power claimed—not merely the immediate outcome of what has already been attempted. And it is of the first importance that due attention be given to the results which might be brought about by the exercise of such a power in the future."

SUMMARY.

The final decree, as applied by the Court below:

1. Permanently enjoins suits to compel State officials to perform governmental powers and duties, required by irrepealable law and paramount provisions in the Federal and California constitutions.

2. Allows petitioner's money *in custodia legis* to be given respondent, without warrant of law.

3. Amounts to summary, coercive Federal impairment of petitioner's statutory and inexpugnable claim of right, never in the custody of the Court.

4. Supersedes the final decree and judgment of October 28, 1936, which is *res judicata* and which bars this second proceeding, begun in November, 1937.

5. Impinges the doctrine of reciprocal immunity, as steadfastly construed and applied by this Court.

PRAYER.

Wherefore, it is respectfully submitted that this Petition for a Rehearing be allowed, that a Writ of Certiorari be issued out of and under the seal of this Court as prayed in the Petition herein, to the end that the permanent injunction, as applied in the Final Decree by the District Court, may be considered, and that the rights reserved to petitioner by the Constitution of the United States and the State of California be protected, that the judgment of the Court below be reversed; and for such other and further proceedings as to this Court seem just and proper.

Dated, San Francisco, California,
October 22, 1948.

J. R. MASON,
Petitioner Pro se.

CERTIFICATE.

I do hereby declare the foregoing petition for a rehearing of this cause is presented in good faith and not for delay, and that it is restricted to the grounds specified.

Dated, San Francisco, California,
October 22, 1948.

J. R. MASON,
Petitioner Pro se.